



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

### Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on September 1, 2012 with a current monthly rent of \$1080.00 payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy.

The landlord served the tenant with the 1 Month Notice on April 28, 2017 on the grounds that the tenant is repeatedly late paying rent.

The landlord provided a copy of the tenancy agreement which establishes that rent is payable on or before the first day of each month. The landlord submitted copies of various 10 Day Notices to End Tenancy issued to the tenant for failure to pay rent on the first of the month. The landlord also submitted a transaction listing of all payments made by the tenant from the beginning of the tenancy. The landlord submitted a

spreadsheet dating back to January 1, 2016. As per this spreadsheet, the tenant paid rent on time on the first of the month for the last three months of April, May and June 2017. In the five months prior to April 2017, rent was paid on November 4, 2016, December 13, 2016, January 5, 2017, February 8, 2017 and March 6, 2017. The tenant was served with a 10 Day Notice for each of these months.

The tenant argues that she did not know there was an issue with her rent payments. She testified that she always paid her rent by depositing in the mail box but since she was made aware of the issue she has been paying it in person at the office.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, the landlord issued the 1 Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent.

Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides the following guidance:

“Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.”

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. The tenancy agreement sets out that rent is due on the first day of each month.

I accept the landlord's evidence that rent was paid late on at least a minimum of three occasions. In fact, rent was paid late in five out six months preceding the 1 Month Notice. I do not accept the tenant's argument that she was not aware the late payments

were an issue as she was issued a 10 Day Notice on each occasion of late payment. I also do not accept the tenant's argument the she deposited the payments in the mail box and that the landlord delayed in depositing the cheques. The obligation is on the tenant to pay the rent when it is due. However, I find that by not issuing the 1 month Notice until April 28, 2017 the landlord has failed to act in a timely manner following the most recent late rent payment. The most recent late rent payment in this case was on March 6, 2017. The landlord could have issued the 1 Month Notice at any time after March 1, 2017 when rent was not received on time. The landlord waited almost 2 full months after the most recent late payment to serve the tenant with the 1 Month Notice and choose to do so 28 days after a month in which rent was actually paid on time. The landlord did not provide any explanation as to why the 1 Month Notice was not served sooner. The tenant has paid rent on time for the last three months including the month before the Notice was issued.

I find that the landlord has failed to provide sufficient evidence to justify that it had cause to issue the 1 Month Notice on the grounds of repeated late payments.

### Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, dated April 28, 2017, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 19, 2017

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Residential Tenancy Branch