



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF, O

### Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Landlord M.D. (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord stated that he would be representing the interests of the landlords in this matter. The tenant testified that S.G. was only attending the hearing in a support role and that the tenant would be speaking on their own behalf.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) and evidence sent by registered mail on September 16, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and evidence.

The tenant acknowledged receipt of the landlord's evidence, which was personally served to the tenant on September 25, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlords' evidence.

The landlord testified that they personally served the One Month Notice to the tenant on August 31, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

### Issue(s) to be Decided

Should the landlords' One Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession based on the One Month Notice?

Is the tenant entitled to recover the filing fee for this application from the landlords?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that this tenancy began in October of 2012, with a current monthly rent of \$975.00, due on the first day of the month. The tenant testified that the tenancy actually began on September 25, 2012, which the landlord confirmed. The tenant testified that the landlords currently retain a security and pet deposit totaling \$900.00, in trust. The landlord confirmed this to be true.

A copy of the landlord's August 30, 2017, One Month Notice was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by September 30, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

*Tenant is repeatedly late paying rent.*

*Tenant has not done required repairs of damage to the unit/site.*

The landlord also submitted the following evidentiary material:

- A tenant ledger showing the rent owing and paid during this tenancy;
- A copy of a letter, dated January 06, 2016, regarding late payment of rent for multiple months in 2015 and a late payment for January 2016;
- A copy of a letter, dated June 06, 2017, regarding the issuance of a One Month Notice to End Tenancy for Cause on that same date, two NSF charges and rent for June 2017;
- A copy of a June 06, 2017, One Month Notice to End Tenancy for Cause;
- Multiple 10 Day Notices to End Tenancy for Unpaid Rent or Unpaid Utilities, with the most recent one being for June of 2017 and all the others issued in either 2015 or 2016; and

- Two copies of “Notice of Tenant Arrears” from a city utility department. At the bottom of the notice it states that “This is not an invoice or a demand for payment”.

In addition to providing some of the same evidentiary material as the landlord, the tenant also submitted the following:

- A series of e-mail exchanges between the landlord and the tenant with one of the e-mails mentioning that the landlord agrees to withdraw their June 06, 2017 One Month Notice to End Tenancy for Cause upon receipt of payment for repairs done to the unit below by the end of June 2017;
- A copy of an e-transfer, dated June 26, 2017, showing a payment that the tenant made to the landlord for the repairs done to the ceiling of the unit below the rental unit; and
- A copy of a receipt showing the tenant paid the utilities on August 29, 2017.

The landlord testified that the tenant has paid the monthly rent late 11 times since 2012. The landlord testified that there is damage, caused by the tenant's pet, inside of the rental unit that has not been repaired. The landlord testified that there have been three instances of the toilet overflowing and leaking to the unit below. The landlord testified that, after the third incident of the toilet overflowing, the strata determined that the drywall needed to be removed to see if there was any mould in the ceiling of the unit below the rental unit. The landlord testified that minimal mould was found and the repairs were completed. The landlord testified that the tenant has been late in paying the rent for December 2016, May 2017 and June 2017. The landlord also testified that the tenant was late in paying the utility bills for July and August of 2017.

The tenant testified that the May 2017 rent was paid on time as the tenant had actually paid it on April 28, 2017. The tenant referred to the landlord's tenant ledger to confirm this. The tenant testified that she does not pay the landlord for her utilities but pays her utility bills directly to the city. The tenant testified that her son has autism and wants to flush the toilet three times with a lot of toilet paper and that the tenant has been working with her son about this issue. The tenant testified that she received a One Month Notice to End Tenancy for Cause on June 06, 2017 and was told that if she paid for the drywall repair, the June 06, 2017, One Month Notice would be withdrawn. The tenant testified

that the damage caused by the pet has been repaired and only requires paint now. The tenant invited the landlord to come and inspect the repairs on the day after this hearing.

The landlord testified that the tenant has been late in paying the monthly rent at least 10 times since the tenancy began. The landlord testified that the pet damage was approximately 30cm in length and less than 30 cm in width.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy if the tenant is repeatedly late paying the monthly rent. Section 47 of the *Act* also allows a landlord to end a tenancy if required repairs of damage to the unit are not completed. The landlord bears the burden of demonstrating on a balance of probabilities that the rent has been repeatedly late and that required repairs have not been completed.

I have reviewed all documentary evidence and affirmed testimony and I find that the landlord has failed to provide sufficient evidence that the tenant has been repeatedly late paying the rent. Residential Tenancy Policy Guideline #38 (PG#38) states that; "Three late payments are the minimum number sufficient to justify a notice under these provisions." PG #38 also states that "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 payment may be determined by an arbitrator to have waived reliance on this provision."

I find that there have only been two instances of late payment of rent in the last 12 months, with one of the instances being for June 2017 and the other most recent in December of 2016. I find that, based on the landlord's tenant ledger, the tenant paid the monthly rent on time for May 2017. I find that the landlord is not entitled to treat the late utility payment for August 2017 as late rent as the tenant does not pay utility charges to the landlord as per section 46(6) of the *Act*. I further find that the landlord has waived their right to act on the late rent payments that occurred in 2015 and prior to December 2016 as they did not issue the One Month Notice in a timely manner after those late rent payments occurred. I find that the two instances of late payment of rent in the last 12 months does not meet the test as laid out in PG#38 which states that a minimum number of three instances are required to issue a One Month Notice for repeatedly late paying rent.

I have reviewed all documentary evidence and affirmed testimony and I find that the landlord has failed to provide sufficient evidence that the tenant has not done required repairs of damage to the unit. I find that there is no documentation or correspondence

indicating that the repairs to the damage, caused by the tenant's pet, are required. I further find that there is no evidence or testimony of a date that was given to the tenant as to when the repairs should be completed by and that there was no deadline for the tenant to have the repairs completed as the tenancy was not ending. I find that, based on the tenant's undisputed affirmed testimony, the repairs appear to have been completed.

Based on the evidence and affirmed testimony, I find the landlords have insufficient grounds to issue the One Month Notice and to end this tenancy for cause. For this reason the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*. Further late payments of rent could very well lead to a different result should the landlords issue a new One Month Notice for the late payment of rent.

As the tenant has been successful in this application, I allow them to recover their filing fee from the landlords.

#### Conclusion

The tenant is successful in their Application. The One Month Notice is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlords for the month of November 2017, in the amount of \$100.00, to recover the filing fee for this application.

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: October 16, 2017

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Residential Tenancy Branch