



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNC, OLC

### Introduction

The tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on September 14, 2017 and an order the landlord comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

### Preliminary Matters

The tenant applied for dispute resolution on September 21, 2017. The landlord confirmed receipt of the hearing documents before the end of September 2017. The landlord received the tenant's evidence included with the application and the additional eight page submission on November 16, 2017.

The landlord served the tenant with evidence via registered mail sent on November 22, 2017. The tenant has yet to receive that mail. The deemed service date by registered mail would be November 27, 2017. The tenant confirmed receipt of the evidence on November 28, 2017; that evidence package was left at the door on November 27, 2017. The tenant said she had not had adequate time to review and to be prepared to respond to the written submission made by the landlord. As this evidence was not provided to the tenant at least seven days prior to the hearing as required by section 3.15 of the Residential Tenancy Branch Rules of Procedure, that evidence was set aside. The landlord was at liberty to read from the evidence and to provide oral testimony.

### Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on September 14, 2017 be cancelled or must the landlord be issued an order of possession?

Must the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy commenced on October 1, 2015. Rent is \$1,500.00 due on the first day of each month.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on October 31, 2017.

The reasons stated for the Notice to End Tenancy were that the tenant has:

- been repeatedly late paying rent;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and
- that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord set out a number of dates of rent payments. A series of text messages were reviewed setting out a process or rent payment the landlord said has occurred for most of the past 17 months. The landlord has been given post-dated cheques for the rent payments. The landlord does not deposit those cheques on the first day of each month. The landlord waits until the tenant sends a text message, telling the landlord to proceed with a deposit of the rent cheque.

The landlord said that rent and text messages were sent in 2017:

April 24 – the landlord texts asking when she can have the money, the tenant responds indicating next week;  
May 24 – the landlord explains she needs money;  
June 17 – the landlord asks when the rent can be deposited; the tenant responds she will check next week;  
July 26 – the tenant writes that the landlord may deposit \$1,500.00;  
August 24 – a cheque is deposited and the tenant writes the balance owed from July will paid next week;  
September – rent paid on time.

This pattern of text messages regarding rent payments occurred during 2016. IN September 2016 the tenants' rent cheque was returned as insufficient funds.

The landlord stated the tenant has been told to pay the rent on time. The tenant supplied a copy of a "Notice of Eviction" issued by the landlord on August 31, 2017. The landlord wrote that the tenant has explained that she does not have enough money for rent so in January 2016 the landlord exempted the tenant from rent payment. The landlord also provide discounted rent on several occasions. The landlord explained rent has been paid toward the end of the month rather the beginning. The landlord wrote that the tenant was being evicted as there were guests in the unit beyond a one month period of time.

In relation to seriously jeopardizing the health and safety of the landlord or another occupant, the landlord stated that the tenant has had two individuals staying in the rental unit. The landlord does not know who these people are and has not given permission for them to be in the unit. Their presence makes the landlord feel vulnerable. During the hearing it was explained that this reason would not support cause to end a tenancy. The tenant was not required to respond.

The landlord stated that there is no basis to an allegation of the property being placed at significant risk.

On September 14, 2017 the landlord issued the tenant a letter indicating there were two ways to end the tenancy. The tenant provided a copy of this letter. The landlord wrote that the tenant could be issued a one month notice ending tenancy "without pay back," or, the tenant could sign a mutual agreement to end the tenancy and receive "pay back" of \$3,000.00. The tenant did not accept the payment offer.

The tenant submits the landlord wants to evict the tenant on a whim. The tenant said that the landlord has post-dated cheques and that the tenant often has to remind the landlord to cash the cheques. The tenant said that during the tenancy she asked if she could delay payment, once in April 2016 when the tenant had knee surgery; the landlord agreed. In the spring of 2017 the tenant asked for a delay again. The tenant said she did not ask for discounted rent but the landlord had reduced rent several times to compensate for noise the landlord and her family make in the upper level of the house. The tenant provided a copy of a February 24, 2017 text from the landlord telling the tenant to pay only \$1,200.00, due to noise issues.

The tenant provided a copy of a listing for the sale of the home. The landlord confirmed that the home is listed for sale.

The tenant stated that the issue seems to be one of miscommunication. The landlord has post-dated cheques and should be cashing them at the start of the month. Sometimes, when the landlord has waited to cash the cheques the tenant must check to be sure there are adequate funds in the account, as her niece also uses the account. The tenant said that if the landlord would cash the post-dated cheques on the first day of the month this would not occur. The tenant had offered to pay via e-transfer on the first day of each month and the landlord rejected that offer.

### Analysis

Residential Tenancy Branch provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under this provision. The late payments do not need to be consecutive.

Policy further suggests:

*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.*

From the evidence before me I find, on the balance of probabilities, that the payment of rent has followed a long-established process whereby the landlord has post-dated cheques which the landlord does not deposit on the first day of each month. For some reason the landlord retains the cheques until the tenant sends a text telling the landlord to deposit the cheque. The landlord submits the delay is due to the fact the tenant does not have money, the tenant said the delay is due to the landlords' failure to deposit the cheque when rent is due.

Given this process of rent payment has taken place for at least 17 months, by the landlords' admission, I find that the landlord has waived reliance of the provision of the tenancy agreement regarding the rent payment due date. The landlord did not take

steps many months ago, when the landlord says this process of rent payment began. Rather, I find that the landlord has tacitly agreed that rent could be paid by the method that has been employed over the past 17 months and cannot now rely on the term set out in the tenancy agreement to evict the tenant.

If the landlord had taken steps earlier in the tenancy the matter could have been resolved, but the landlord allowed the method of rent payment to occur. I find it just as likely that the tenant expected the landlord to cash the post-dated cheques on the first day of each month. There was no reasonable explanation provided as to why the landlord was not depositing the post-dated cheques on the first day of each month.

In relation to the presence of guests providing cause to end a tenancy; it was explained during the hearing that section 30 of the Act prohibits a landlord from unreasonably restricting access to the residential property by a person permitted on the property by the tenant. There was no evidence supplied that the guests were engaging in any disturbing behavior or causing any damage to the property.

The landlord offered no testimony in relation to any significant risk.

Therefore, I find that the one month Notice ending tenancy for cause issued on September 14, 2017 is of no force and effect and that the notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

In order to provide clarity to the parties, pursuant to section 62(3) of the Act I find that rent will now be due on or before the first day of each month. The tenant is at liberty to provide post-dated cheques, to make e-transfers to the landlord, or to pay by any other method that ensures the landlord has the rent payment no later than midnight on the first day of each month.

### Conclusion

The one month notice ending tenancy for cause issued on September 14, 2017 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

This decision is final and binding and 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: December 06, 2017

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Residential Tenancy Branch