



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LIONS COURT HOLDINGS LTD  
and [tenant name suppressed to protect PRIVACY]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and give submissions.

The landlord's agent testified that the tenant has not served the landlord with any evidentiary material, however the only evidence provided by the tenant to the Residential Tenancy Branch is the first page of a One Month Notice to End Tenancy for Cause, and the tenant testified that the evidence was included in the Hearing Package provided to the landlord with the Tenant's Application for Dispute Resolution and notice of this hearing. Since the landlord has also provided a copy of both pages of the One Month Notice to End Tenancy for Cause, and the tenant has not denied receiving the landlord's evidentiary material, the landlord's evidentiary material is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord's agent** testified that this fixed term tenancy began on January 1, 2012, expired on December 31, 2012 and then reverted to a month-to-month tenancy and the tenant still resides in the rental unit. Rent in the amount of \$1,150.00 per month was originally payable on the 1<sup>st</sup> day of each month, was raised from time-to-time and is currently \$1,248.94 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$575.00

which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment within an apartment complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on December 13, 2017 the tenant was served with a One Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, a copy of which has been provided for this hearing. It is dated December 13, 2017 and contains an effective date of vacancy of January 16, 2018. The reason for issuing it states: "Tenant is repeatedly late paying rent."

The tenant has been continually late paying rent since the beginning of the tenancy until served with the One Month Notice to End Tenancy for Cause, and then paid rent on time for January and February, 2018. The tenancy agreement provides for late payment fees of \$25.00 per month, but the tenant has refused to pay any and the landlord has not enforced it. The landlord has provided copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities as evidence for this hearing for the months of June and August, 2016 as well as September, 2017, and the landlord's agent testified that such notices are not issued every month. However the tenant has been late, having paid recently on December 5, November 2, October 3, September 6, August 3, and July 4, 2017. Some rent payments were made in cash, however generally the tenant attends the landlord's office and pays by cheque. The landlord has also provided a copy of a tenant ledger covering the period of January, 2016 to December, 2017.

**The tenant** testified that the landlord's agent is incorrect, and that the tenant has dropped off cheques at the office of the landlord on the first day of each month, and does not know how to disprove a negative. Once, rent was paid in cash but not for about the last year and a half.

The tenant has provided a copy of a portion of a bank statement, but not as evidence for this hearing. The landlord does not have a copy, and I decline to consider it.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, the reason for issuing it, "Tenant is repeatedly late paying rent," is in dispute.

I refer to Residential Tenancy Policy Guideline #38 - Repeated Late Rent, which states that a minimum of 3 late payments is required in order to end a tenancy for that purpose. It also states that the late payments must be recent. In this case, the landlord's agent

testified that the tenant has been late every month until served with the One Month Notice to End Tenancy for Cause, which is disputed by the tenant. The landlord has provided 2 10 Day Notices to End Tenancy for Unpaid Rent or Utilities that are dated in 2016 and one in 2017. Although I agree that a landlord need not issue notices for every month for unpaid rent in order to end a tenancy for repeated late rent, such notices would be evidence of repeated late rent. However, I have reviewed the tenant ledger provided by the landlord, and in the absence of any evidence to support the tenant's testimony, I accept that rent has been paid late consistently since January, 2016. I find that the landlord has established repeated late rent, and I dismiss the tenant's application.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*, other than the effective date of vacancy. Since rent is payable on the 1<sup>st</sup> day of each month, the effective date must be the last day of the month following the issuance of the notice, which in this case is January 31, 2018. Since that date has passed, I grant an Order of Possession effective on 2 days notice to the tenant.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: February 22, 2018

---

Residential Tenancy Branch