



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROSPERO REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord were present at the hearing. Both parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions of evidence under oath. The landlord was represented at the hearing by K.H.

The tenant acknowledged receipt of the landlord’s 1 Month Notice to End Tenancy on December 27, 2017. Pursuant to section 88 of the *Act*, the tenant is found to have been served in accordance with the *Act*.

The tenant said that he served the landlord in person with his application for dispute resolution on approximately January 9, 2017. Pursuant to section 89 of the *Act*, the landlord is found to have been duly served with the tenant’s application for dispute.

### Issue(s) to be Decided

Can the tenant cancel the landlord’s 1 month notice to end tenancy? If not, is the landlord entitled to an Order of Possession?

Can the tenant recover the filing fee from the landlord?

### Background and Evidence

Testimony provided to the hearing by the tenant explained that this tenancy began on June 15, 2015. Rent is currently \$880.00 per month, and a security deposit of \$415.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord explained that a 1 Month Notice to End Tenancy had been issued to the tenant because of repeated late payments of rent. The landlord stated that the building had been sold in May 2017 and was taken over by its current owners. The landlord said that since May 2017, the tenant was late paying rent in July, September, October, November and December 2017 but stated that 10 Day Notices to Pay Rent were only issued in November and December 2017.

The tenant acknowledged that rent was late in both November and December 2017 but denied that the rent was late in the other months listed by the landlord. The tenant said that withdrawals had inadvertently been taken out of his account by a gym membership in July 2017 and he explained that these matters were discussed with the building manager. He said he was assured that the owners had no issue with this. The tenant disputed that rent was late at any other time, other than November and December 2017.

Building manager, A.H.F. who attended the hearing on behalf of the landlord said that she had resided in the building since December 2007 and was aware of several other late payments of rent by the tenant when the previous owners were in charge of the building.

### Analysis

The tenant has applied to cancel a landlord's 1 Month Notice to End Tenancy for repeated late payments of rent. The *Residential Tenancy Policy Guideline* explains in section 38 what must be considered when examining an application of this nature. It says, "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 in between...in exceptional circumstances, for example, where an unforeseen bank error has caused the late payment, the reasons for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent."

Based on the oral testimony presented at the hearing, and the evidence submitted to the hearing, I find that that landlord has failed to demonstrate that **three** late payments

of rent were made by the tenant. The tenant acknowledged that rent was late on two occasions, presented credible evidence that an unforeseen bank error had caused rent to be late in July 2017 and disputed the landlord's testimony that rent was late in September and October 2017. The landlord failed to issue a 10 Day Notice to the tenant on the other occasions on which rent was allegedly late, and did not produce any evidence such as receipts or warning letters, that rent was paid late in the months cited by them at the hearing. I note that a warning letter was issued to the tenant for late payment of rent for January 2018; however, this notice cannot be considered for the purposes of this hearing as it was issued after the 1 Month Notice to End Tenancy was issued. For these reasons, I dismiss the 1 Month Notice and find that this tenancy shall continue until it is ended in accordance with the *Act*.

As this tenant was successful in his application, he may pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the landlord. In lieu of a monetary award, the tenant may withhold \$100.00 from a future rent payment on **one** occasion.

### Conclusion

The tenant was successful in cancelling the landlord's 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on **one** occasion.

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: March 5, 2018

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Residential Tenancy Branch