



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR; CNC; OLC; RP; ERP; MNDC

### **Introduction**

This is the Tenant's Application for Dispute Resolution made March 6, 2018, seeking to cancel a Notice to End Tenancy for Unpaid Rent; to cancel a Notice to End Tenancy for Cause; Orders that the Landlord comply with the Act, regulation or tenancy agreement and provide regular and emergency repairs; and compensation for damage or loss.

This matter was first convened on May 17, 2018. An Interim Decision was issued on May 22, 2018, which should be read in conjunction with this Decision.

Both parties attended the reconvened Hearing, which took place by teleconference on May 24, 2018, and gave affirmed testimony. The Landlord provided the Tenant with copies of documents as ordered.

The Notice to End Tenancy for Unpaid Rent was cancelled at the Hearing on May 17, 2018, as the Tenant had paid the outstanding rent within hours of receiving that Notice.

Rules 2.3 and 6.2 of the Rules of Procedure provide:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

#### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End

Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

[Reproduced as written]

In this case, I find that the Tenant's other claims, other than his application to cancel the Notice to End Tenancy for Cause, are not sufficiently related to his request to cancel the Notice. Those other claims are therefore **dismissed with leave to reapply**.

### **Issue to be Determined**

Is the Notice to End Tenancy for Cause issued on March 1, 2018 (the "Notice") a valid notice to end the tenancy?

### **Background and Evidence**

Both parties gave a large amount of oral testimony, some of which was not relevant to the Tenant's application to cancel the Notice. I have recorded only the relevant testimony in this Decision.

This tenancy agreement provides that the tenancy began on November 1, 2017. Monthly rent is \$800.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

The Notice, which was attached to the Tenant's door on March 1, 2018, indicates the following reasons for ending the tenancy:

- The tenant is repeatedly late paying rent.
- The tenant or a person permitted on the property by the tenant has significantly interfered or unreasonably disputed another occupant or the landlord and has put the landlord's property at significant risk.
- The tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.

The parties agreed that the Tenant pays rent in cash and that the Landlord meets with the Tenant to collect the rent. The Landlord stated that he works evenings and therefore does not always require the rent to be paid on the first day of the month. Sometimes, the parties agree to meet on the 2<sup>nd</sup> or 3<sup>rd</sup> of the month so that rent can be paid. The Landlord stated that December rent was paid, "I think on the 3<sup>rd</sup> or the 4<sup>th</sup>", January rent was paid, "I think on the 6<sup>th</sup>", and February rent was paid "on the 4<sup>th</sup>". The

Tenant stated that December rent was paid “on the 2<sup>nd</sup>”; January’s rent was paid in advance on December 30<sup>th</sup>; and February’s rent was paid on the “2<sup>nd</sup> or 3<sup>rd</sup>”. The Landlord does not issue receipts to the Tenant.

The Tenant testified that parties agreed to cancel the Notice.

The Landlord testified that the Tenant is storing a lot of debris and garbage at the rental property. He stated that, “we agreed he would clean up”, but that after that agreement the Tenant “is trying to make another room under the patio” at the rental property, without the Landlord’s permission and that he has a letter from the next door neighbour complaining about the Tenant fighting with another occupant at the rental property.

A copy of an agreement, dated March 6, 2018, and signed by both parties, was provided in evidence.

### **Analysis**

When a tenant seeks to cancel a notice to end the tenancy, the burden is on the landlord to provide sufficient evidence that the tenancy should end for the reason(s) given on the notice.

The Residential Tenancy Branch’s Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice to end tenancy for repeated late payment of rent. In this case, however, the Landlord meets with the Tenant so that the Tenant can pay him in cash and does not issue receipts, which is contrary to the Act. Neither party was certain what day of the month that rent was paid. Therefore, I find that the Landlord has not provided sufficient evidence to prove this reason for ending the tenancy. The Landlord is cautioned to provide the Tenant with receipts for rent paid in cash.

I find that the Landlord did not provide sufficient evidence that the Tenant engaged in illegal activity. Therefore, I find that the third reason given for ending the tenancy has not been proven.

In any event, I find that the Notice was cancelled by mutual agreement. The parties signed an agreement which provides:

“Date 16 Mar 18

I [the Tenant] have settled with [the Landlord] the dispute. We have no further issue. We both are agree (sic) the things below:

- Need to all the stuff clear from under the patio and a hallway
- No smoke and drug in the property

- No loud music and noise after 10 pm – 9 am
- Laundry once a week

Thanks

[signed by the Landlord and the Tenant] “

If the Landlord believes that, after the parties came to the agreement as set out above, the Tenant or a person permitted on the property by the tenant has significantly interfered or unreasonably disputed another occupant or the landlord and has put the landlord's property at significant risk, then **the Landlord is at liberty to issue a new notice to end the tenancy.**

### **Conclusion**

The Tenant's applications to cancel the Notice to End Tenancy for Unpaid Rent and to cancel the Notice to End Tenancy for Cause are both granted. The tenancy will continue until it is ended in accordance with the provisions of Section 44 of the Act.

Pursuant to the provisions of Rules 2.3 and 6.2, the remainder of the Tenant's Application for Dispute Resolution is **dismissed with leave to reapply.**

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 6, 2018

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Residential Tenancy Branch