



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPRIETIES CANADIAN 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 company attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and 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*, specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord's agent** testified that he has been employed as an agent of the landlord company since May, 2017.

This tenancy began on June 1, 2015 on a fixed-term basis until May 31, 2016 and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided as evidence for this hearing which specifies rent in the amount of \$870.00 per month, in addition to \$25.00 for parking and

\$10.00 for gas. The landlord's agent testified that currently rent is \$895.00 per month in addition to \$40.00 for parking and \$10.00 for gas. Rent is payable on the 1<sup>st</sup> day of each 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 \$440.00 as well as a pet damage deposit in the amount of \$440.00, both of which are still held in trust by the landlord. The rental unit is one of 281 units in a complex containing 3 buildings, and the landlord's agent also resides on the rental property.

The tenancy agreement specifies:

"6. RENT AND FEES. Rent must be received by the landlord on or before the first calendar day of each month, unless the parties agree in writing in advance to a different date. Subject to clause 13, Additional Occupants, the tenant agrees that for each additional tenant or occupant, not named in clause 1 or 2 above, the rent will increase by \$100.00 per month, effective from the date of his occupancy. The acceptance by the landlord of any additional occupant does not otherwise change this Agreement or create a new tenancy."

"13. ADDITIONAL OCCUPANTS: Only those persons listed in clauses 1 or 2 above may occupy the rental unit or residential property. A person not listed in 1 or 2 above who, without the landlord's prior written consent, resides in the rental unit or on the residential property in excess of fourteen cumulative dates in a calendar year will be considered to be occupying the rental unit or residential property contrary to this Agreement. If the tenant anticipates an additional occupant, the tenant must apply in writing for approval from the landlord for such person to become an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice."

The landlord's agent further testified that on April 25, 2018 the landlord served the tenant with a One Month Notice to End Tenancy for Cause (the Notice) by posting it to the door of the rental unit. A copy has been provided as evidence for this hearing and it is dated April 25, 2018 and contains an effective date of vacancy of May 31, 2018. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk.

In support of the allegation of repeated late rent, the landlord has provided a copy of a Tenant Ledger card, which is kept in hand-writing, and the landlord's agent testified that it shows late fees, permitted in the tenancy agreement, for each late payment of rent. It commences on May 27, 2015 and runs to June 1, 2018. Also provided are copies of 10 Day Notices to End Tenancy for Unpaid Rent or Utilities. The first is dated December 5, 2017 effective December 18, 2017 for unpaid rent in the amount of \$895.00 that was due on December 1, 2017. The landlord issued another on December 15, 2017, effective December 25, 2017 for unpaid rent in the amount of \$100.00 that was due on December 1, 2017. The landlord's agent testified that it was issued because of an additional occupant in the rental unit. Another is dated March 5 and effective March 18, 2018 for unpaid rent in the amount of \$995.00 that was due on March 1, 2018; and another dated April 2, 2018 effective April 25, 2018 for unpaid rent in the amount of \$995.00 that was due on April 1, 2018. Basically since the tenant moved in it's been a catch-up game. However May and June's rent have been paid on time.

The landlord has also provided a cover letter to the Residential Tenancy Branch containing a summary of late payments of rent: June, September and November, 2015; May and July, 2016; January and December, 2017; and March and April, 2018.

The landlord's agent also testified that the late rent of \$895.00 in December, 2017 is when the landlord discovered that the tenant had a roommate. The roommate attempted to pay the rent, but the roommate hadn't been approved for tenancy. The landlord's agent understood that if the landlord accepted rent from the roommate, it would mean that the landlord accepted the roommate as an occupant, but he had not been approved. The rental amount of \$895.00 was received on December 14, 2017.

The tenant also had his son residing in the rental unit, and the landlord approved one occupant for a fee of \$100.00, but not both the tenant's son and roommate. Copies of correspondence sent to the tenant have been provided as evidence for this hearing. The extra \$100.00 charge was applied from December, 2017 to April, 2018, but not in May or later.

The landlord's agent also testified that the landlord received complaints of a smell in the common hallway of cat feces. The landlord's agent has been employed by the landlord for just over a year, and there were previous notes given to the tenant about that, and since.

In the event that the tenant is not successful with the application to cancel the Notice, the landlord would be content with an Order of Possession effective July 31, 2018.

**The tenant** testified that he miscalculated the rent by \$5.00 earlier in the tenancy and the landlord kept adding a late rent payment. When the tenant received the first 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant enquired and the landlord's agents couldn't answer that. Then the tenant received another notice, and again no one could figure it out. Three agents of the landlord looked into it and all came up with different numbers. When it was finally figured out that it was a miscalculation of \$5.00, the tenant immediately paid the balance.

On another occasion, the landlord agreed to accept a post-dated cheque.

The tenant did not allow anyone to live in the rental unit without the landlord knowing. The tenant's son sometimes stayed in the rental unit, but did not live there.

In December, 2017 the landlord's agent acted surprised that the tenant had a roommate, yet an agent of the landlord gave the tenant a key for the roommate. The landlord knew in September, 2017 that the tenant had a roommate and approved it. The tenant paid the regular rent and the \$100.00 additional occupant fee before either of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities took effect. Then the landlord's agent said the roommate had to move out and tried to kick out the tenant's son, and added the \$100.00 additional occupant fee from December, 2017 till 2 months ago. If the tenant had a choice, the tenant would have allowed the roommate to stay. The tenant's son didn't live there.

The tenant struggled, and if the surcharges had not been imposed the tenant would not have been late. Rent for March and April, 2018 was late because the tenant didn't have the extra \$100.00 for an additional occupant. Also, the tenant gets paid on the last day of each month and the landlord would often process the rent before the tenant got a chance to deposit his paycheque, and then NSF fees and late fees would apply.

The tenant has also provided photographs for this hearing with descriptions and testified that he bought an expensive cat litter box that seals. Since December, 2017 the tenant has been varnishing a desk and received no complaints, but the cat litter box is in the bathroom and can't be disturbing. The dog "bathroom" area is right off the tenant's balcony, and the tenant notices the smell of wet dog when he goes into the hallway. The tenant denies the smell is due to his cat.

### Analysis

A tenant must pay rent in full when it is due. In order to end a tenancy for repeated late rent, the minimum number of late payments that the landlord must prove are 3 within a recent period of time.

I have reviewed all of the evidentiary material of the parties, and I also note that a letter from the landlord to the tenant dated April 9, 2018 states that the landlord is returning the tenant's rent cheque and that the landlord cannot accept it that late in the month due to the tenant's payment history. Also, I cannot ignore the evidence that the landlord refused rent money from an occupant of the rental unit. The tenant testified that the landlord's agents approved the additional occupant, perhaps not the agent who attended this hearing, but I accept that it was no surprise to the landlord. The landlord's agent refused the rent money to prevent classifying the additional occupant as a tenant. The tenant has been paying the fee for an additional occupant and did so from December to April, however the additional occupant was there in September and the landlord was notified. The landlord did not charge the additional occupant fee until December, 2017, but by refusing rent, I find that the landlord has not established repeated late rent for 3 or more times in the recent past.

With respect to the other reason for issuing the Notice:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk.

I am not satisfied, considering the undisputed testimony of the tenant and the photographs, that there is a dog "bathroom" area next to the tenant's balcony, and the tenant smells wet dog in the hallway.

In the circumstances, I am not satisfied that the landlord has established the reasons for issuing the One Month Notice to End Tenancy for Cause, and I cancel it.

The *Residential Tenancy Act* states that a tenant must pay rent when it is due, and the tenancy agreement specifies that rent is due on the 1<sup>st</sup> day of each month. The tenant must find a way to ensure, whether working out of town or otherwise, to ensure that rent is paid in full on the 1<sup>st</sup> day of each month, and I order the tenant to comply with the *Act* and the tenancy agreement.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated April 25, 2018 is hereby cancelled and the tenancy continues.

I hereby order the tenant to comply with the *Residential Tenancy Act* and the tenancy agreement by paying rent in full on the 1<sup>st</sup> day of each month.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: June 30, 2018

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Residential Tenancy Branch