



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 11, 2018 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated July 1, 2018 (the “Notice”). The Tenant also applied for an order that repairs be made to the unit.

Both the Tenant and Landlord appeared at the hearing. The hearing process was explained to the parties and neither had questions when asked. The parties provided affirmed testimony.

The Landlord provided his full legal name and I amended the Application to reflect this. This is also reflected in the style of cause.

I told the Tenant I would not consider the request for an order that repairs be made to the unit given this was unrelated to the main issue before me being the dispute of the Notice. Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I dismiss this claim with leave to re-apply.

The only relevant evidence submitted by the Tenant was a copy of the Notice. The Landlord had submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord’s evidence. I did not address service of the Notice as this is a document the Landlord issued and served on the Tenant. The Landlord confirmed he received the hearing package and raised no issues in this regard. The Tenant confirmed she received a copy of the Landlord’s evidence.

Both parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all relevant documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

### Background and Evidence

The parties agreed on the following in relation to a tenancy agreement. There is a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started June 1, 2011 and is a month-to-month tenancy. Rent is \$921.00 per month due on the first day of each month.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated July 1, 2018 by the Landlord. It has an effective date of August 1, 2018. The grounds for the Notice are that the Tenant is repeatedly late paying rent.

The Landlord testified that he served the Notice on the Tenant by posting it on the door of the rental unit July 1, 2018. The Tenant acknowledged receiving the Notice July 1<sup>st</sup> or 2<sup>nd</sup> posted on the door of the rental unit.

The Tenant confirmed she filed the Application July 11, 2018.

In relation to the grounds for the Notice, the Landlord testified as follows. The Tenant is repeatedly late paying rent. Rent is often paid two to three weeks late. It is not a couple times here and there, rent has been late almost every month for two years. In 2018, the Tenant paid rent late every month from January to July.

The Landlord had submitted bank documents and text messages as evidence of the late rent payments.

The Tenant testified as follows. She thought her and the Landlord had an amicable relationship and that there was an agreement between the two about rent payments. She thought the Landlord was fine with her paying rent late or paying in installments. The first sign of the Landlord not being okay with how and when she was paying rent was in February. In February, she had a conversation with the Landlord where she was

outlining her financial situation and the Landlord told her he did not want to hear her stories anymore.

The Tenant agreed she paid rent late every month from January to July of 2018. The Tenant did not submit that she had authority under the *Residential Tenancy Act* (the “Act”) to withhold rent.

I asked the Tenant to point to where in the text message evidence the Landlord indicates he is okay with the late payment of rent or her paying rent in installments. The Tenant pointed to a number of texts.

In reply, the Landlord said he never agreed the Tenant could pay rent late or pay in installments. He said there was never an understanding between him and the Tenant that the late payment of rent was okay. He submitted that the text messages do not show he was okay with the late payment of rent. He said the Tenant would tell him when she was paying rent and left him no choice in the matter.

### Analysis

Section 47(1)(b) of the *Act* allows a landlord to end a tenancy if the tenant is repeatedly late paying rent.

A notice to end tenancy under section 47 of the *Act* must be served on the tenant in accordance with section 88 of the *Act*. The notice must comply in form and content with section 52 of the *Act*.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice.

Based on the testimony of both parties, I find the Notice was served on the Tenant in accordance with section 88(g) of the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

I note that the late rent payments as shown in the texts date back to 2015. I have focused on the late rent payments for 2018.

The Tenant acknowledged that she has paid rent late every month from January of 2018 to July of 2018. The Tenant said she had a conversation with the Landlord in February where the Landlord indicated that he no longer wanted to hear her stories relating to late rent payments. I note that in January and February, the Tenant texted the Landlord to advise him when the balance of the rent had been paid for those months and the Landlord responded, "Ok thanks" and "Thanks". I do not find these texts to be an agreement that the late rent payments are okay.

The Landlord sent the Tenant a text March 2, 2018 asking the Tenant whether the rent cheque is in the box or if she is going to email transfer the rent. The Tenant then tells the Landlord when rent will be paid. Again, the Landlord's March text does not support the submission that the Landlord agreed rent could be paid late or in installments. If anything, it supports the position that the Landlord expected rent to be paid on time as he is checking up on the rent as of March 2, 2018, the day after it is due.

On April 2, 2018, the Landlord sent the Tenant a text stating "Once again you are late with the rent. When will you be paying April rent?" I find this text again reiterates that rent is due on the first of the month and payments not made by the first of the month are late.

On June 2, 2018, the Landlord sent the Tenant a text saying, "Reminder rent was due yesterday". In response, the Tenant wrote "...I'll have rent for you next weekend". The Landlord replied, "Rent is due on the first of each month". The Tenant responded "I'm aware! Thanks". The Tenant did not pay rent until June 13, 2018.

The Tenant said she thought the Landlord was okay with her paying rent late and in installments and that the first sign of this not being okay was in February. Based on this submission, I find the Tenant should have at least been aware as of February that paying rent late and in installments was not fine with the Landlord. I do not find that the Landlord's text messages from February on show the Landlord was agreeing to the late payment of rent. I find the texts mostly support that the Landlord expected rent to be paid by the first day of each month.

Even after the February conversation the Tenant referred to, the Tenant paid rent late March, April, May and June. The Notice was issued in July. I find the four late rent payments from March to June of 2018 sufficient to find the Tenant is repeatedly late paying rent and I uphold the Notice based on these late rent payments.

I do not accept that the Landlord agreed to the late payment of rent. The Landlord testified he never agreed to the late payment of rent. The Tenant has not submitted evidence to support her position that the Landlord agreed to the late payment of rent.

I note that it is the Tenant's responsibility to pay rent on time in accordance with the tenancy agreement. There was no issue that the tenancy agreement states rent is due on the first day of each month. In my view, the Landlord should not have to check up on when rent will be paid every month. Nor should the Landlord have to continually ask about rent to make it clear that he expects rent to be paid in accordance with the tenancy agreement.

I find the Landlord has proven the grounds for the Notice. I uphold the Notice and dismiss the Application.

Pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession. The Landlord asked that the Order of Possession be effective September 30, 2018.

### Conclusion

The Application is dismissed. The Notice is upheld.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on September 30, 2018. This Order must be served on the Tenant. If the Tenant does not comply with this Order, it may be filed in the Supreme Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 10, 2018

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Residential Tenancy Branch