



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On July 13, 2018, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated July 5, 2018, ("the 1 Month Notice") be cancelled.

The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord testified that she did not serve a copy of the documentary evidence she provided to the Residential Tenancy Branch to the Tenant prior to the hearing. Since the Landlord's evidence was not served in accordance with the Residential Tenancy Branch rules of procedure, the Landlord's evidence is excluded from the hearing.

### Issue to be Decided

- Does the Landlord have cause to end the tenancy?

### Background and Evidence

Both parties testified that the tenancy commenced in January 2015, on a month to month basis. At the start of the tenancy the parties agreed that rent could be paid on a bi monthly basis. The parties testified that rent of \$800.00 was due each month; however, the precise dates the rent was to be paid and the amount to be paid was a loose arrangement. The parties submitted that a rent payment was due at the beginning of each month and in the middle of each month. The Landlord submitted that she never put the tenancy agreement into writing.

The Landlord submitted that approximately one year into the tenancy the Tenant said he could start paying the rent at the beginning of each month. The Landlord testified that this change to the terms of the tenancy agreement was never put into writing.

The Landlord testified that she is simplifying her life and she want to sell the rental unit. She testified that the Tenant was late paying the rent for April 2018, May 2018, June 2018, and July 2018. She testified that the Tenant has always paid the rent in full; however, he is paying late.

The Landlord testified that the Tenant did not inform her about deficiencies in the unit and this caused issues when she attempted to sell the unit.

The Landlord served a 1 Month Notice To End Tenancy For Cause to the Tenant on July 5, 2018.

The Landlord selected the following reasons for ending the tenancy in the 1 Month Notice:

- Tenant is repeatedly late paying rent
- Tenant knowingly gave false information to prospective Tenant or purchaser of the rental unit/site property/ park

In response to the Landlord's testimony, the Tenant submitted that the tenancy agreement regarding when rent was due was a loose agreement. The Tenant testified that on his own initiative he began to pay the rent close to the first day of each month. He testified that he liked to have the rent paid in full as often and as early as possible. The Tenant testified that he likely paid the rent late on a couple of occasions.

### Analysis

Section 13 of the Act requires that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Residential Tenancy Branch Policy Guideline # 38 Repeated Late Payment of Rent is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides the following:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.*

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

In the matter before me, the Landlord has the onus of proof to prove that the reasons in the Notice are valid. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord failed to prepare the tenancy agreement in writing at the start of the tenancy. I find that there was no agreement which specifies the day of the month when the bi monthly rent payments were due.

I also find that there is insufficient evidence from the Landlord to establish that the parties agreed to change the terms of the tenancy for rent to be due by the first day of each month.

While I accept that the Tenant has made rent payments at different times throughout the month, the lack of agreement in the hearing and the lack of a written tenancy agreement which specifies the day of the month that the rent payments are due leads me to find that the Tenant did not breach the tenancy agreement by repeated late payment of rent.

In addition, the Landlord acknowledged in the hearing that the Tenant did not knowingly give false information to a prospective purchaser of the rental unit. She submitted that if the Tenant did so, she has no evidence of it.

I find that the Landlord provided insufficient evidence to end the tenancy.

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause dated July 5, 2018, is successful. The 1 Month Notice To End Tenancy For Cause dated July 5, 2018, is set aside.

The Tenancy will continue until ended in accordance with the Act.

### Conclusion

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause dated July 5, 2018, is successful.

The Tenancy will continue until ended in accordance with the Act.

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: September 10, 2018

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Residential Tenancy Branch