



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EQUITEX PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, CNC,

### Introduction

On August 22, 2018, the Tenant submitted an Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause (“the Notice”) and seeking an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Landlord and Tenant attended.. 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 Tenant testified that she never received a copy of the Landlord’s documentary evidence.

The Landlord testified that she served the documentary evidence to the Tenant using registered mail on September 25, 2018. The Landlord testified that the registered mail was sent to the Tenant at the dispute address.

I accept the Landlord’s testimony that the evidence was served by registered mail and I find that pursuant to section 90 of the Act, the Tenant is deemed to have received the

documents on the fifth day after they were mailed. The Landlord's evidence is accepted.

### Issue to be Decided

Has the Tenant breached the Act or the tenancy agreement by repeatedly paying rent late?

### Background and Evidence

The parties testified that the tenancy began in June 2014, on a month to month basis. Rent in the amount of \$1,154.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit of \$525.00 and a pet damage deposit of \$525.00.

The Landlord testified that the Tenant is repeatedly late paying the rent. The Landlord issued a 1 Month Notice to End Tenancy For Cause to the Tenant by posting it to the Tenant's door on August 9, 2018.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that she was not at home on August 9, 2018, and she could not recall when she received the 1 Month Notice on her door. The Tenant applied to dispute the 1 Month Notice on August 22, 2018.

The Landlord testified that the Tenant is repeatedly late paying the rent. The Landlord testified that the Tenant paid the rent late for the following months; and provided a Tenant ledger showing payments for those months as follows:

- September 5, 2017
- October 11, 2017
- November 2017
- July 6, 2018
- August 14, 2018

The Landlord testified that in May 2018, a warning letter regarding late payments of rent was given to the Tenant.

The Landlord testified that the rent for July 2018, was received on July 6, 2018. The Landlord testified that the rent for August 2018, was received on August 13, 2018.

The Landlord is looking to end the tenancy based on repeated late payment of rent and is seeking an order of possession for the rental unit.

In reply, the Tenant testified that the Landlord's ledger of rent payments is not accurate because the Tenant has rent receipts that show different dates. The Tenant provided rent receipts showing payments as follows:

- September 1 2017
- April 2, 2018
- May 1, 2018
- June 1, 2018.

The Tenant testified that she does not believe that she paid the rent late for October 2017. She testified that November 2017, was a lost payment and not her fault. She testified that rent was paid to the Landlord using a money order. She testified that the bank concluded that the money order was never cashed and the money order was stopped and refunded to the Tenant. She testified that the rent was repaid to the Landlord in February 2018.

With respect to the July 2018, rent payment, the Tenant testified that she was out of town and contacted the Landlord requesting that they accept an electronic money transfer, but they refused. The Tenant testified that she paid the rent as soon as she returned home.

With respect to the August 2018, rent payment, the Tenant testified that she had extra costs related to veterinary bills, so to ensure there was enough money to pay the rent she returned some recently purchased items to stores and had her bank account credited. She testified that she returned the items to the stores on August 1, 2018.

The Tenant provided a store receipt showing she returned an item on August 1, 2018 at 10:47 am. The Tenant provided an email from her bank that indicates the bank was unsure why the returned items were posted on August 2, 2018.

### Analysis

With respect to the issue in the Notice regarding late payment of rent, section 47 of the Act states that a Landlord may end a tenancy by giving a Notice to end the tenancy if the Tenant is repeatedly late paying rent.

The Residential Tenancy Policy Guideline #38 with respect to repeated late payment of rent sets out that three late payments are the minimum number sufficient to justify a notice to end tenancy.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Tenant's evidence that indicates September 2017, rent was paid on September 1, 2017.

I find that there was a lost rent payment for November 2017, which was paid in February 2018. There is insufficient evidence from the Landlord to establish that the Tenant was at fault for the lost payment.

With respect to the rent payment for August 2018; I find that the Tenant took proactive steps to ensure that she had enough funds on August 1, 2018, to cover the rent payment. I find that items were returned to the stores on August 1, 2018, and her account was not updated until the following day. I find that the issue of crediting the money to the Tenant's account is a bank error.

I find that the Tenant paid the rent late for the months of October 2017, and July 2018. The Tenant did not provide any testimony or evidence other than her belief that rent was not late for October, 2017. The Landlord's ledger indicates the rent paid by cheque on October 11, 2018. The Tenant did not provide a rent receipt or any banking information in support of her testimony that the rent was paid on time.

The Tenant testified that rent was paid late for July 2018. I find that the Landlord was not obligated to permit the Tenant to pay the rent using e-transfer for July 2018.

I find that the Tenant has paid the rent late on two occasions. There is insufficient evidence from the Landlord to demonstrate that the tenancy must end due to repeated

late payments of rent. The Tenant is strongly cautioned that any further late payments of rent could put her tenancy at risk.

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause dated August 9, 2018, is granted. The 1 Month Notice is set aside.

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

### Conclusion

There is insufficient evidence from the Landlord to establish that the tenancy must end due to repeated late payments of rent. The Tenant is strongly cautioned that any further late payments of rent could put her tenancy at risk.

The Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause dated August 9, 2018, is granted. The 1 Month Notice is set aside.

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: October 16, 2018

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Residential Tenancy Branch