



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OLC, MNDC, FF

### Introduction

This hearing was convened in response to an application dated June 7, 2019 and an amendment to the application dated June 7, 2019 by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to cancel two notices to end tenancy - Sections 46 and 47;
2. An Order for the landlord’s compliance - Section 62;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notices to end tenancy?

Is the Landlord in compliance with the Act?

Is the Tenant entitled to compensation?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy under written agreement started on March 17, 2017. Rent of \$750.00 is payable monthly and the tenancy agreement provides that “rent is due on first of calendar month”.

On June 2, 2019 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent of \$750.00 due June 1, 2019. The Landlord states that it received \$650.00 for the rent in the mail on June 4, 2019. The Landlord states that the Rent Notice is no longer effective as the payment was for the correct amount and within the 5 days receipt by the Tenant.

On June 4, 2019 the Landlord served the Tenant with a one month notice to end tenancy for repeated late rent (the "Notice") by sending the Notice through registered mail. The reason stated on the Notice is that the Tenant has been repeatedly late paying rent. The details section of the Notice sets out that the Tenant was late paying rent in August and December 2018 and in January and June 2019.

The Tenant states that the matter of late payments for August 2018, December 2018 and January 2019 were dealt with in a previous Decision dated May 25, 2019 and were found not to be late rent payments. The Tenant denies paying the rent late for June 2019. The Tenant submits that in July 2018 the Landlord required the Tenant to make its rental payments by mail to a local address. The Tenant submits that the rent cheque for June 1, 2019 was mailed to the Landlord on May 29, 2019 and that as the address was local the mail would have been delivered within a day. The Landlord argues that the Decision dated May 25, 2019 was wrong. The Landlord states that it applied for a review consideration of this Decision and that the Review Consideration Decision dated June 7, 2019 that dismisses the Landlord's application for review was also wrong. The Landlord made disparaging comments about the intellectual capacity of arbitrators and states that the Director committed illegal acts as part of a "mafioso" in not responding to the Landlord's complaints about the Decisions and in not directing the arbitrators to make different Decisions. The Landlord confirmed that no judicial review has been sought in relation to these previous Decisions.

The Tenant states that since August 7, 2018 the Landlord has served three previous notices to end the tenancy and that all were disputed and found to be invalid. The Tenant states that the Landlord is not acting in compliance with the Act by issuing and serving invalid notices. The Tenant states that the Landlord's continuous actions with the notices for the same reasons over the past year amount to harassment. The Tenant seeks an order that the Landlord comply with the Act. The Tenant states that the harassment has caused the Tenants significant stress and disruption and that it should not have occurred. The Tenant claims compensation of the equivalent of one month's rent and states that this is a global amount that the Tenant felt was fair. The Landlord states that "its all false" and that all the Landlord has done is exercise its legal rights to seek the end of the tenancy. The Landlord states that it follows procedures. The Landlord argues that it can exercise its rights on the same notices because the decisions are incorrect. The Landlord states that it is being harassed by the Tenant.

#### Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. The dispute in relation to late rent payments for August 2018, December 2018 and January 2019 were dealt with in the previous Decision dated May 25, 2019. This Decision found that the Landlord had not substantiated when it received the rent payments and for this reason it could not be found that the payments were late. Given that this previous Decision dealt with whether or not the rent payments were late and as the Landlord is using these same rent payments to validate the Notice, I find that the matter of August 2018, December 2018 and January 2019 rent payments can no longer be considered for the purposes of the Notice.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations

or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I note that neither the tenancy agreement or the Act provides that the Landlord must receive the rent when it is due. As the tenancy agreement provides that rent is due on the first day of each month, as the Landlord has required rent to be paid by sending rent cheques in the mail and as the Tenant sent the June 2019 rent cheque in the mail prior to June 1, 2019 I find that the Tenant was not late paying rent for June 2019.

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. As the Landlord's Notice is only in relation to the three rent payments that were already decided upon and on the June 2019 rent payment that has been found paid on time, I find that the Landlord has not substantiated that the Notice is valid for its stated reason. I find that the Tenant is entitled to its cancellation. As this Notice has been cancelled and as the 10-day notice to end tenancy for unpaid rent was vacated by the payment of the rent within the period allowed, I find that the tenancy continues.

Section 28(b) of the Act provides that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. Given the Landlord's insistence that the previous Decisions were wrong, that the Landlord can issue notices to end tenancy even where the reasons for the notices have been found not to be valid in previous Decisions, and considering that the Landlord did not seek judicial review of any of the past Decisions, I consider the Landlord's actions in continuing to serve repeat or already determined notices to be stubbornly highhanded with reckless disregard for the Tenant's rights, well-being and dignity. For this reason and given the Tenant's evidence of stress over the past year, I find on a balance of probabilities that the Tenant has substantiated that the Landlord caused an unreasonable disturbance to the Tenant's enjoyment of its home. A review of the previous Decisions indicates that it was not until March 2019 the Landlord started to issue notices in relation to rental payments that had been previously determined. I find therefore that the Tenant is only entitled to

compensation for 5 months from the period March to July 2019. As the Tenant claimed \$750.00 for a 12-month period I find that the Tenant is entitled to 5/12 of \$750.00 or **\$312.50**.

As the Tenant has been successful with its application I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$412.50**. the Tenant may deduct this amount from future rents payable. Should there be other issues related to the Landlord's compliance with either the tenancy agreement or Act, the Tenant remains at liberty to seek an order for compliance.

#### Conclusion

The Notice is cancelled and of no effect. The tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$412.50**. If necessary, this order may be filed in the Small Claims 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: July 31, 2019

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Residential Tenancy Branch