



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Preliminary matter

The Tenant included a monetary worksheet in the amount of \$1,700.00 in his evidence package, but the Tenant's application did not include a monetary claim. The Tenant has not amended the application to add a monetary claim as required by the Act. Consequently, I find the Tenant's monetary claim will not be dealt with in this hearing. The Tenant is at leave to reapply for any monetary claims within the 2 year application time limit.

### Introduction

This hearing dealt with an application by the Tenant to obtain an order to cancel a Notice to End Tenancy for Cause and to recover the filing fee.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on May 27, 2019 in accordance with section 89 of the Act. The Landlord's Agent confirmed receiving the Tenant's application and hearing package.

### Issues to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on November 8, 2011 at the rental complex in a different rental unit. The present rental agreement started in July 2017 as a verbal month to month tenancy. Rent is \$600.00 per month payable on the 1st of the month. The Tenant said he paid a security deposit of \$237.50 at the start of the first tenancy. The security deposit is being held for the second tenancy unit and has not been increased. A move in condition inspection report was completed at the start of the tenancy for the first unit but not for the second rental unit.

The Landlord's Agent said that she took over as property manager in May 2019. The Agent continued to say the Tenant has not paid the rent in three years, therefore he has been repeatedly late on his rent payments which is the first reason on the 1 Month Notice to End Tenancy for Cause dated May 13, 2019. The Landlord's Agent said the Tenant and Landlord had an agreement that the Landlord would pay the Tenant \$25.00 per hour to do maintenance and repair work at the rental complex up to a maximum amount equal to the rent. Further the verbal agreement was that the Tenant's payments for work done would be applied to the Tenant's rent. The Landlord's Agent said she understands the work payments have been accepted as the rent payments over the last three years. The Agent continued to say there are no records of hours worked or if the rent was or was not paid. The Agent said that the May 2019 rent was \$100.00 short so she issued a 10 Day Notice to End Tenancy for Unpaid Rent and then she accepted the Tenant's work on the rental complex and \$30.00 as full payment of the May 2019 unpaid rent. The Landlord's Agent said she has no corroborative evidence to prove the rent was not paid by the Tenant for the last three years. The Landlord's Agent agreed the owners of the property accepted the Tenant's work payments as rent payments.

The Landlord continued to say that she believes the Tenant was an employee of the Landlord because he was doing maintenance work for the Landlord and the Landlord was crediting that work against the Tenant's rent payments. The Agent said this shows the Tenant was an employee of the Landlord and as the Agent has now terminated the Tenant's employment the tenancy should end. Termination of employment is the second reason on the 1 Month Notice to End Tenancy for Cause dated May 13, 2019.

The Tenant said he has never been an employee of the Landlord he just did contract maintenance work at the rental complex and they put these earnings toward his rent. The Tenant said he paid his full rent at the start of the tenancy and if his work wages were less than the rent he would pay the difference. The Tenant continued to say that his hours of work have exceeded the amount of rent many months and he did not get paid for any overages. The Tenant said he is not an employee of the Landlord, he is a Tenant and this is not a valid reason to evict him.

With respect to the first reason on the Notice which is repeatedly late with rent payments the Tenant said he may have been late a few times in 7 years, but in the last

three years the payments from his work at the property more than covered the rent payments each month. The Tenant said the owner of the property was happy with the work/rent arrangement and he did not receive any 10 Day Notices for unpaid rent or warning letters about unpaid rent up to May 2019. In May 2019 he received a 10 Day Notice for Unpaid Rent from the Landlord's Agent, which he paid. The Landlord's Agent agreed that she accepted \$30.00 and hours of work done at the property as full payment of the May 2019 rent.

The Tenant said he has not been late with his rent over the last three years because the work he has done at the property at an hourly rate of \$25.00 has covered his rent payments each month. This was the agreement between him and the owner/landlord of the property.

The Landlord's Agent said she believes the Tenant has taken advantage of the owner of the property as she is elderly and has some health issues. As well the Agent said the family is now taking over the management of the property and they have cancelled any work arrangement with the Tenant and they want to end the tenancy.

The Tenant said he wants to continue the tenancy, he understands the situation and he will pay his rent as any Tenant does.

The Landlord's Agent said in closing that the Tenant has taken advantage of the situation. Further if he was being paid by the Landlord then he was an employee and there is no records of his wages being apply to the rent. The Landlord's agent said they want to end the tenancy as soon as possible.

The Tenant said in closing the arrangement he had with the owner/landlord worked for many years and was a benefit to both parties. The Tenant said he has never been an employee of the owner and he has paid his rent on time with the funds made from his work on the rental property. The Tenant requested the Notice to End Tenancy be cancelled.

### Analysis

Section 26 (1) of the Act says 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.

Policy guideline 38 says three late payments are the minimum number sufficient to justify a notice under these provisions.

With regard to the first reason on the Notice to End Tenancy; I find the Landlord's Agent has not provided corroborative proof that the Tenant's rent was not paid or was repeatedly late. There are no 10 Day Notices for Unpaid Rent issued to the Tenant nor is there any documentations of the rent not being paid by letter or any other means. Without specific evidence that the rent was not paid on time the Landlord's Agent has not established grounds for the first reason of repeatedly late rent payments. I dismiss the Landlord's claim that the Tenant has being repeatedly late with the rent payments.

Further the second reason for ending the tenancy is that the Tenant is no longer in the employ of the Landlord. For an employment situation to exist with a tenancy agreement the terms of the employment and tenancy must both be written into the tenancy agreement. For example a manager of the rental complex may receive a rental unit to live in as part of his compensation for working for the Landlord. In this situation the Tenant and the owner/landlord had a verbal tenancy agreement and a separate verbal employment agreement. The verbal tenancy agreement was for a rental unit at \$600.00 per month and the employment agreement was for \$25.00 per hour of work up to a maximum of the rent amount. I find these are separate agreements/contracts and as such the stopping of the employment agreement does not end the tenancy agreement. I find the Landlord's Agent has not established grounds to prove the tenancy should end because the Tenant is no longer employed by the Landlord. The 1 Month Notice to End Tenancy for Cause dated May 13, 2019 is cancelled and the tenancy is ordered to continue as agreed.

As the Tenant was successful in this matter I order the Tenant to reduce the August 2019 rent by \$100.00 to recover the \$100.00 filing fee which has already been paid. The Tenant's rent is reduced from \$600.00 to \$500.00 for August 2019.

### Conclusion

The Landlord's 1 Month Notice to End Tenancy for Cause dated May 13, 2019 is cancelled and the tenancy is order to continue as verbal agreed.

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: July 8, 2019

---

Residential Tenancy Branch