



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, LRF, RP, RR, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy for “repeated late payment of rent.” Section 47 of the *Residential Tenancy Act* (the “Act”) provides that such a claim, if proven, is a lawful reason for a landlord to end a tenancy.

The tenant also applies for a repair order, a compliance order and an order restricting the landlord’s right of access and a rent reduction on the basis that the landlord has failed to carry out necessary repairs. As stated at hearing, these claims are unrelated to the urgent claim that has given this matter a priority hearing date, namely the tenant’s challenge to a Notice to End Tenancy. As provided in Rule 2.3 of the Rules of Procedure, I exercise my discretion to dismiss the remainder of the tenant’s claims, with leave for her to re-apply. At any subsequent hearing she may also claim to recover the filing fee for her second application scheduled for today.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Has the tenant been “repeatedly late” paying rent?

### Background and Evidence

The rental unit is a bachelor/studio condominium apartment. The tenancy started in January 2019. The rent is \$1500.00 per month. The landlord holds no deposit money.

The tenancy started as a three month fixed term tenancy but has continued on as a month to month tenancy.

The landlord testifies confirming the Details of Cause found in the Notice, that the tenant was late paying rent in February, March April, May, June and July 2019. He says the tenant did not pay the full rent in July until the 9<sup>th</sup>, in June until the 4<sup>th</sup> and in the other months until the 2<sup>nd</sup>.

The tenant admits she paid rent late. She says it was her habit to pay \$1000.00 on the first and the remaining \$500.00 on the second because the e-transfer arrangements with her financial institution limited her to \$1000.00 per day. She denies she paid the July rent after July 2. She says the June rent was cash and was agreed to be paid to the landlord on May 31 when he had agreed to meet. However the landlord changed that meeting and the rent wasn't paid until the 4<sup>th</sup>.

She says she offered to pay in full by post dated cheques but the landlord never came around to collect them.

In reply the landlord notes it is the tenant's responsibility to pay rent on time and it is not his job to chase after her for cheques.

### Analysis

Residential Tenancy Policy Guideline 38, "Repeated Late Payment of Rent" provides that rent is repeatedly late when it is late three times.

The landlord is correct that it is the tenant's job to ensure that her rent debt is paid on its due date. He is correct that she could have split the payments over the last day of the preceding month and the first day of the month for which rent was being paid, and thus not be late.

At the same time it appears that the tenant explained to the landlord her reason for the payments over two days and he did not object. She proceeded to pay accordingly every month and he did not object. In these circumstances I find that the tenant was operating under the fair impression she had the landlord's tacit consent to the arrangement. It was open to the landlord to specifically refuse to continue with the

arrangement and the tenant might then have changed her practice, but the landlord did not.

In these circumstances I find that the tenant's rent payments up to June 2019 were not late in the sense required to justify eviction.

On the divided evidence concerning a possible arrangement to pay rent by cash, it has not been proved that June rent was late.

### Conclusion

For these reasons I find that the tenant has not been proved to have been repeatedly late paying rent and I allow her application and cancel the one month Notice to End Tenancy.

As this dispute resulted from what might be considered a mutual misunderstanding, I allow the tenant recovery of one half the filing fee; the amount of \$50.00, and I authorize her to reduce her next rent payment due after receipt of this decision by \$50.00 in full satisfaction of the award.

Needless to say, any implicit agreement of the landlord to the tenant's habit of paying rent other than on or before the first business day in each month has been revoked.

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 27, 2019

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Residential Tenancy Branch