



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREEN BAY LANDING INC. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on September 16, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) 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 18, 2010 as a month to month tenancy. Rent is \$548.27 per month payable on the 1<sup>st</sup> day of each month.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 6, 2019. She served the Notice on September 6, 2019 by personal delivery to the Tenant. The Effective Vacancy date on the Notice is October 8, 2019 which pursuant to section 53 of the Act is automatically corrected to October 31, 2019.

The Landlord continued to say that the Tenant has had numerous late rent payments which are a breach of a material term of the tenancy agreement. The Landlord continued to say she wrote the Tenant letters on July 3, 2019, June 10, 2019 November 2, 2018 and September 4, 2018 that the Tenant had late payments for rent and utilities. The letters said it is a reminder to pay the rent on time which is required or the Landlord

may issue a Notice to End Tenancy. The Landlord submitted a summary of the Tenant's late payments and e-transfer confirmations to support the Landlord's claim of numerous late rent payments. The Landlord summary is as follows:

Late rent payments

September 4, 2018 (7:22 pm)  
November 2, 2018 (9:41am)  
January 2, 2019 (11:00 am)  
February 24, 2019 (Utilities) (10:12 am)  
March 2, 2019 (11:05 am)  
April 2, 2019 (12:02 am)  
June 11, 2019 (Utilities) (1:45 pm)  
July 2, 2019 (12:46 pm)  
August 23, 2019 (Utilities) (10:47 am)  
September 2, 2019 (12:56 am)

On time rent payments

October 1, 2018 (1:41 pm)  
December 1, 2018 (11:36 pm)  
May 1, 2019 (4:13 pm)  
June 1, 2019 (1:16 pm)  
August 1, 2019 (2:40 pm)

The Landlord continued to say that the Tenant has been late with one utility payment which was paid on June 11, 2019. The Tenant paid the bill the day after a reminder letter (June 10, 2019) was sent to the Tenant about the late utility bill. The Landlord continued to say the Tenant has been late with other rent payments, but she only submitted rent transactions for 1 year. The Landlord said it is the responsibility of the Tenant to make sure the rent is paid by midnight on the date it is due, which in this tenancy is the 1<sup>st</sup> day of each month. The Landlord said her evidence shows the Tenant's rent payments have been late 7 times in the last year and the Tenant has been late paying the utilities one time in the last year. The Landlord requested to end the tenancy based on the Tenant being repeatedly late with the rent and utility payments.

The Tenant said that she has been paying the rent by e-transfer for about one year and she believes the e-transfer system has delayed the rent payment or the Landlord has not accepted it on the day the rent payment was sent. The Tenant continued to say that she previously paid the rent by post dated cheques and she was never late with a rent payment. The Tenant said she has only been late with the rent on two occasions, July 2019 as she thought there was a rent increase and she did not have the correct amount so she contacted the Landlord for the new rent amount. The Tenant said it turned out the rent increase was for August 2019 so she paid the July rent on July 2, 2019. Further, the February 2019 rent was paid originally on February 1, 2019 but the password was changed on the e-transfer so the rent payment was resent on February 7, 2019 with the corrected information.

The Tenant continued to say that she submitted a copy of her bank statement showing the amounts and dates of the e-transfers from her to the Landlord. The Tenant said all the rent payment e-transfers were made on the first of the month except July which was made on July 2, 2019 and February which was corrected and sent on February 7, 2019. The Tenant submitted the copy of the bank statement to support her testimony that her

rent has been paid on time. The bank statement shows all withdraws/transfers are on the first day of each month from September 2018 through to June 2019, July 2, 2019 is paid on July 2, 2019 and then the payments are on the first for August and September 2019. The utility payments are shown as well on November 1, 2018, February 24, 2019, June 11, 2019 and August 23, 2019. The Tenant said she believes that she has paid the rent on time or with the agreement from the Landlord when she was late on July 2 and February 7, 2019. The Tenant requested the 1 Month Notice to End Tenancy for Cause be cancelled because the rent payments have not been late. The Tenant requested the tenancy to continue as agreed in the tenancy agreement.

The Landlord said that it is the Tenant's responsibility to make sure the Landlord has the rent by midnight on the day it is due. It is not the Landlord's responsibility to check with the bank for transfers. The Landlord said she submitted copies of e-transfer confirmations that prove the Landlord did not receive the rent until the second day of the month or later on 7 different occasions in the last year. The Landlord said these rent payments were late no matter when the Tenant said she sent the payment.

The Tenant said she can not control when the bank does e-transfers or when the Landlord accepts the e-transfer. The Tenant said she believed the transfers were made the same day that she issued the e-transfer and the money was taken from her account that day. The Tenant continued to say that as her bank statement indicated the e-transfers were taken from her account on the first of each month except for July 2 and February 7, 2019.

The Tenant said in closing, she has been in the Park since 2010, she is a good tenant and the Landlord only raised the issue of late rent payments when she started paying by e-transfer. The Tenant continued to say the money was taken from her account on the first of each month for the rent payment and she does not understand how she was late with the payment. The Tenant said it may be a bank issue or the Landlord may not have accepted the e-transfer until the next day.

The Landlord said in closing that they are requesting to end the tenancy as the Tenant has been late with 7 rent payments over the past year and she feels it would be unfair to the other tenants in the Park to allow this Tenant to pay her rent late on many occasions. The Landlord said the Tenant is responsible to pay the rent on time and she has not. Consequently the Landlord said the Act says they can end the Tenancy for repeatedly late rent payments and the Landlord is requesting to end the tenancy.

## Analysis

**Section 20**(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.

As well: **Section 40** of the Act says a landlord may end a tenancy by giving notice to end tenancy if one or more of the following:

(b) the tenant is repeatedly late paying the rent

(h) the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable time after receiving written notice from the landlord.

**Residential Tenancy Policy Guideline #38** says:

The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> 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. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far part an arbitrator may determine that, in that circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due and the Landlord has indicated the Tenant has been late with the rent payment 7 of the last 12 months of the tenancy. The Landlord wrote the Tenant letters on September 4, 2018, November 2, 2018 and July 2, 2019 to advise the Tenant that the rent payments had to be made on time or the Landlord would issue a Notice to End Tenancy. If repeated late payments of rent that are not corrected after receiving a written request to pay the rent on time, it can be a breach of a material term of the tenancy agreement. I accept the Landlord's testimony and evidence that the Landlord received the Tenants rent payments after the rent due date for 7 of the last 12 months.

The Tenant has provided a copy of a bank statement showing debits to the Tenant's account being sent to the Landlord. These debits are all dated the first day of the month except July 2, 2019, February 7, 2019 and the utility payments. The Tenant said both the July and February late rent payments were discussed with the Landlord. The July payment was late because the Tenant thought (mistakenly) there was a rent increase and she requested the new rent amount from the Landlord on July 1, 2019 and then submitted the rent on July 2, 2019. The February payment was resubmitted February 7, 2019 due to a password change on the e-transfer. The Tenant's position is that she made e-transfers on the first of each month and the funds were debited from her account on the first of each month, so the Tenant said she was not late with her rent payments. The Tenant said she can not control when the Landlord accepts the e-transfers and she believes the bank sent the e-transfer on the same day the Tenant made the e-transfers. The Tenant said she believes she paid the rent on the day it was due except for July and February 2019.

I have reviewed the testimony and evidence of both parties. Both parties have strong evidence to support their position. The Landlord has confirmation emails of when they received the rent payment and the Tenant has provided a copy of her bank statement showing her account was debited on the first of each month except July and February 2019.

It is my view this is an exceptional situation as described in Policy Guideline #38. It is clear from the Tenant's bank statement that the Tenant's account was debited and the e-transfers were sent on the first of each month except for February and July 2019. What is not clear from the evidence is how the delay in the e-transfer sent by the Tenant to the Landlord happened. The evidence leads me to believe it was a bank delay or bank error or the Landlord accepted the e-transfers on the second day of the month not the first day of the month. I have concluded this because the e-transfers were sent on the first day of the month except February and July 2019 and the time lapse in the Landlord's email confirmations varies from 2 minutes on April 2, 2019 to 11 hours 5 minutes on March 2, 2019. This variance in time leads me to believe the delay was in

receiving of the e-transfers not the sending of the e-transfers. If this is the case then the late receiving of the payments is not the responsibility of the Tenant. As well 5 months of e-transfers from the Tenant were sent on the first day of the month and received on the first day of the month. This indicates the system of paying rent by e-transfer on the first of each month except for February and July and the accepting the e-transfers on the first day of the month worked for 5 months of the year. Consequently, I find the Tenant's bank statement evidence is significant in supporting the Tenant's position that the rent was paid on time for all months except February and July, 2019. Further, I find that the Landlord was aware and had discussions with the Tenant about the February and July 2019 rent payments; therefore I find these two payments are not deemed as late rent payments. The utility payments are considered late payments 30 days after a formal demand has been made to pay the utility bill. In this situation the Tenant paid the utility bill on June 11, 2019 which was one day after the formal demand letter dated June 10, 2019; therefore this utility bill is not considered a late payment. I find the Tenant has established grounds to cancel the Landlord's 1 Month Notice to End Tenancy for Cause dated September 6, 2019. The 1 Month Notice to End Tenancy for Cause dated September 6, 2019 is cancelled and the tenancy is ordered to continue as agreed in the tenancy agreement.

Further I strongly encourage the Tenant to make whatever arrangements or changes that are need to ensure the Landlord receives the rent payment on or before the first day of the month from now on.

As the Tenant was successful in this matter, I order the Tenant to reduce the next rent payment by \$100.00 to recover the filing fee for this application. This is a one time only rent reduction.

### Conclusion

The Landlord's 1 Month Notice to End Tenancy for Cause dated September 6, 2019 is cancelled and the tenancy is ordered to continue as agreed in the tenancy agreement.

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: November 20, 2019

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Residential Tenancy Branch