



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR

### **Introduction**

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) filed October 02, 2019 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice), dated October 02, 2019.

Both parties attended the hearing. The tenant was assisted by an advocate. The parties were given opportunity to present all *relevant* evidence submitted in accordance with the Rules of Procedure. I did not accept late evidence submitted by the tenant 2 days before this hearing to the landlord, and this proceeding. The parties were given opportunity to provide testimony in respect to the application and to fully participate in the conference call hearing. The parties were given opportunity to mutually resolve this dispute, to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. Both parties attended the hearing.

### **Issue(s) to be Decided**

Should the Notice to End dated October 02, 2019 be set aside? If not, is the landlord entitled to an Order of Possession pursuant to Section 55 of the Act?

### **Background and Evidence**

The relevant evidence in this matter is as follows. The tenancy started December 23, 2014. The parties agreed that the written tenancy agreement in this matter states that the payable rent is due in advance on the 1<sup>st</sup> of every month. However, the parties agree that the rent has not been paid in accordance with the tenancy agreement; rather,

that the landlord has accepted the rent for each month in the last week of a given month, which the tenant testified coincides with their benefit payment. The tenant claims the practice of “back-paying” the rent began in January 2015, when they paid the first month’s rent in the last week of January 2015, several weeks after they moved into the rental unit, and which has remained to this date. The landlord testified that the practice of back-paying the rent has occurred at least for the past 24 months. The landlord agreed that their testimony mirrors the statement they provided into evidence, which states,

*Yes, I the landlord have excepted rent late from Garnet in the past, however, I am tired of having to wait for my rent and going through this each month. I would like to receive rent on the 1<sup>st</sup> of every month. Garnet has often only paid partial amounts of her rent and ask me to wait for the rest. Rent is due in full on the first of every month. – as written*

The parties agreed that the rent for October 2019 was satisfied on October 23, 2019.

### **Analysis**

In this matter, I find that at the outset of the tenancy the parties agreed the rent was payable on the 1<sup>st</sup> of every month, in advance. However, moving forward the practice of paying the rent became different than originally contracted by the parties and that for at least the last 24 months the rent for a given month was paid and accepted in the last week of the given month. For example, the rent due for September 2019, was paid and accepted within the last week of September 2019.

In this matter I find that by their historical conduct the landlord effectively *Waived* reliance on their right to receive the rent as articulated in the tenancy agreement, on the 1<sup>st</sup> of every month.

The legal doctrine of **Waiver** is the surrender or voluntary relinquishment of a known right or privilege by conduct inferring that a particular right has been relinquished.

As a result of all the above, I find that the landlord’s Notice to End is invalid and hereby is **cancelled** or set aside and is of no effect.

### **Conclusion**

The tenant's application is granted. The tenancy continues in accordance with the Act.

**This Decision is final and binding.**

*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 04, 2019

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Residential Tenancy Branch