



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OT, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on October 10, 2019. The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated September 4, 2019 (the "One Month Notice");
- an application for another issue that has not been referenced elsewhere; and
- an order granting the return of the filing fee.

The Tenant, the Tenant's witness A.E., and the Landlords attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant stated that they served their Application and documentary evidence to the Landlords by registered mail, however, could not recall the date of service. The Landlords confirmed receipt on October 22, 2019. The Landlords stated that they served the Tenant with their documentary evidence in person, however, could not recall the date of service. The Tenant confirmed receipt. Pursuant to section 71 of the *Act*, I find the above mentioned documents were sufficiently served for the purposes of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the One Month Notice.

The Tenant's claim for another issue that has not been referenced elsewhere dismissed with leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the Act?
2. If the Tenant is unsuccessful in cancelling the One Month Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the Act?
3. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

#### Background and Evidence

The parties testified and agreed that the tenancy began in July of 2016. The current Landlords stated that they purchased the rental property in July of 2018 and that the parties entered into a new tenancy agreement on October 1, 2018. Currently, the Tenant is required to pay rent in the amount of \$1,035.00 to the Landlords each month. The Tenant paid a security deposit in the amount of \$500.00 which the Landlords continue to hold.

The Landlords testified that the Tenant has been repeatedly late paying rent. The Landlords stated that based on the new tenancy agreement, the Tenant is required to

pay rent on the last day of each month. The Landlords stated that the Tenant has paid rent on the 1<sup>st</sup> day of each month in January, February, March, April, May, June, July, August, and October 2019. The Landlords stated that the Tenant also paid rent late on September 2, 2019. The Landlords stated that they subsequently served the Tenant in person on October 4, 2019 with a One Month Notice dated September 4, 2019 with an effective vacancy date of November 4, 2019. The Landlords' reason for ending the tenancy on the One Month Notice is;

*"Tenant is repeatedly late paying rent"*

The Tenant stated that he has been paying his rent in full on the first day of each month ever since the start of his tenancy. The Tenant acknowledged that he paid rent late on September 2, 2019. The Tenant stated that the Landlords have always accepted the rent on the first day of the month and have never cautioned him regarding the late payments. The Tenant stated that he suspects the Landlords are seeking to end the tenancy as the Tenant did not agree to paying addition utility costs.

In response the Landlords stated that they have asked for the rent to be paid on time each month, however, the Landlords stated that they have lost these communications with the Tenant and therefore have been unable to include them in their documentary evidence. The Landlords stated that they have not served any notices to end tenancy for unpaid rent to date and are seeking to end the tenancy for cause.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlords wish to end the tenancy on the basis that the Tenant has been repeatedly late paying rent.

The Residential Tenancy Policy Guideline 38 states 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.

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.

The Landlords served the Tenant with a One Month Notice dated on September 4, 2019, in person on October 4, 2019. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

The Landlords stated that the Tenant is required to pay rent in the amount of \$1,035.00 on the last day of each month. The Landlords stated that the Tenant has paid rent on the 1<sup>st</sup> day of each month in January, February, March, April, May, June, July, August, and October 2019. The Landlords stated that the Tenant also paid rent late on September 2, 2019. The Tenant confirmed the Landlords' testimony but stated that he was under the impression that rent was due on the first day of each month. The Tenant stated that he has paid rent on the first day of each month throughout the entire tenancy and that the Landlords have never warned him regarding the discrepancy.

Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act. In this case, I find that the Landlords accepted late rent payments throughout the tenancy and have provided insufficient evidence to demonstrate that they have cautioned the Tenant to pay on the last day of each month and that failure to do so could give the Landlord's sufficient cause to end the tenancy. I find that it is more likely than not that the Tenant was unaware that the due date of rent had been changed from rent being due on the first day of the month to the last day of each month as of October 1, 2018.

In light of the above, I cancel the One Month Notice, dated September 4, 2019 and order the tenancy to continue until ended in accordance with the Act.

As the Tenant was successful in his Application, I find that he is entitled to the recovery of the filing fee. I find that the Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

### Conclusion

The Tenant's Application is successful. The One Month Notice issued by the Landlord dated September 4, 2019 is cancelled. The tenancy will continue until ended in

accordance with the Act. The Tenant is permitted to deduct \$100.00 from one (1) future rent payment.

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 19, 2019

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Residential Tenancy Branch