



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION CLARIFICATION

The landlord applies for a clarification of the decision rendered January 17, 2020 in this matter, determining, among other things, that the tenants had not been “repeatedly late” paying rent as alleged in a one month Notice to End Tenancy. The landlord’s request concerns two areas of the decision.

The Notice in question required the landlord to give Details of Cause for the Notice. In this case those details were the dates the tenants were alleged to have been late. The landlord listed April 2018 as one of the months in which the tenants had been late paying rent. The tenants filed material to show they had not been late paying rent that month. The landlord filed a response to indicate that month had been erroneously included in the Details of Cause and that it should have been a different date: February 2019.

There is no provision whereby a landlord may amend a notice to end tenancy after it has been served on a tenant.

Section 68(1) of the *Residential Tenancy Act* provides for the amendment of eviction notices by the Director (and thus by an arbitrator) at a hearing.

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

(b) set aside or amend a notice given under this Act that does not comply with the Act.

It is unlikely this provision would extend to altering the Details of Cause cited in the Notice served on a tenant. Even if it could be so extended, it was not alleged nor was it shown that the tenants knew or should have known of the error in the Details of Cause portion and, indeed, their filing of proof of payment for that month would argue against them knowing it was a simple error.

The second area of the decision pointed out by the landlord in his Request for Clarification is the finding that the tenants were not late paying rent for October 2019. During her testimony the tenant Ms. C.R. stated that the tenants had paid cash for the October 2019 rent two and one half days late because the landlords would not accept an e-transfer for the rent.

As noted at hearing (and as provided for in Residential Tenancy Policy Guideline 38, "Repeated Late Payment of Rent,") in exceptional circumstances the reason for the lateness may be considered. Where the parties have not agreed on any particular method of payment of rent, a landlord is, in my view, entitled to refuse a e-transfer of funds to pay rent. However, such a refusal is so out of the ordinary in these times that a tenant is entitled to fair warning so as not to be late paying the rent. It was my view that in the circumstances the tenants were not late that month.

The landlord points out a sentence contained in the extensive materials submitted by both the landlords and tenants where the tenants state, "we paid our rent in cash on Oct 4 only 3 days late." This paragraph in the tenants' material was not put to Ms. C.R. after her testimony nor referred to or otherwise submitted at any time during the hearing. It was therefore not considered.

Dated: January 31, 2020

Residential Tenancy Branch