



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms that only Tenant NW is named as a tenant on the tenancy agreement.

### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement started on June 4, 2018. Rent of \$1,333.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$650.00 as a security deposit. On March 10, 2020 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the “Notice”). The Notice given to the Tenant carries the Landlord’s signature. The reasons stated on the Notice is that the Tennant has been repeatedly late paying rent. The Notice sets out the details of the late rent payments.

The Landlord states that leading up and including October 2019 the Tenant was repeatedly late paying rent. The Landlord states that it does not know when the Tenant makes the payment only when the payment is processed or received by the Landlord. The Landlord submits that the Tenant paid November 2019 rent on November 2, 2019. The Landlord states that after this payment the Tenant was served with a one month notice to end tenancy for cause with the reason of repeated late rent. The Landlord states that the Parties then resolved this previous notice by oral agreement that the Tenant would pay rent from that point forward by pre-authorized debit. The Landlord states that the Tenant thereafter paid its rent as agreed until the March 2020 rent which although paid on the first day of that month was subsequently returned N.S.F.

The Tenant states that it paid its rent for November 2019 on November 1, 2019 by e-transfer.

### Analysis

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Given the undisputed evidence that the late rent payments to and including October 2019 were paid late but resolved under a mutual agreement between the Parties I find that these rent payments cannot now be considered as evidence to support the Notice. Given the Landlord's evidence of only knowing when the rent is received and the Tenant's undisputed evidence of having paid the rent by e-transfer on November 1, 2019, I find on a balance of probabilities that the Landlord has not substantiated this payment as being late. As the only other undisputed evidence of late rent is for March 2020, I find that the Landlord has not substantiated repeated late rent payments since October 2019. For these reasons I find that the Notice is not valid for its stated reason and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant's claim has been successful, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim. As only Tenant NW is named as a tenant on the tenancy agreement I make this monetary order payable only to Tenant NW.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 14, 2020

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Residential Tenancy Branch