



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on November 19, 2020.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice, be cancelled?

### Background and Evidence

The tenancy began July 2017. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenant paid a security deposit of \$550.00 and a pet damage deposit of \$550.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 31, 2020.

The reason stated in the Notice was that the tenant has:

- Tenant is repeatedly late paying rent;
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the rent is due on the 1<sup>st</sup> of each month and that the tenant was spoken to about the issue of the late payments of rent and that rent must be paid on time; however, the tenant just said that they do not receive their pay cheque until the 1<sup>st</sup> of the month.

The landlord testified that the tenant was late with rent on the following occasion.

- November 2019, rent was paid on November 2, 2019;
- December 2019, rent was paid on December 2, 2019;
- January to March rent was paid on time;
- April through August late payments cannot be considered due the state of emergency order;
- September 2020, rent was paid on September 2, 2020;
- October 2020, rent was paid on October 2, 2020; and
- And the Notice was issued for late payments of rent.

The tenant testified that they get paid on the 1<sup>st</sup> and 15<sup>th</sup> of the month. The tenant stated that they would then send the landlord an e-transfer for rent. The tenant stated that they are responsible for rent being late for September and October 2020 as they knew it was due on the 1<sup>st</sup> of the month.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has been repeatedly late paying rent.

In this case, I am satisfied that the tenant has been late with rent on at least four occasions, this being November 2019, December 2019, September 2020, and October 2020. Three late payments are the minimum number sufficient to justify a notice under these provisions.

I am further satisfied that the tenant knew rent was due on the 1<sup>st</sup> of the month. Simply because they receive their pay cheque on that date, does not entitle them to send their rent late. The tenant could have sent their transfers to the landlord on the 1<sup>st</sup> of the month, even if it was late in the evening to meet their obligations under the Act.

Further, while the above late payments that I have noted above, appear for a part; however, that is only because I did not consider the rent that was paid late during the stated of the emergency as the landlord was not allowed to end the tenancy at that time. However, the tenant continued to pay late rent even after the state of emergency for eviction was removed.

I find the Notice has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy will end in accordance with the Act.

At the hearing the landlord agreed to extend the effective date in the Notice to March 31, 2021, to give the tenant additional time to find alternate housing. I find that is reasonable. The tenant is to ensure rent for March 2021, is paid on time.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective on **March 31, 2021, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As I have ended the tenancy based on repeated late payments of rent. I do not need to consider the other reason listed in the Notice.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: February 20, 2021

---

Residential Tenancy Branch