



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Codes: CNC, FF

### Introduction

The tenant has applied for dispute resolution of a dispute in the tenancy at the above address and requests an order pursuant to section 47(4) of the Residential Tenancy Act to set aside a Notice of End a Residential Tenancy March 31, 2014 and setting the end of tenancy for April 30, 2014.

### Issue(s) to be Decided

Is the landlord's Notice valid?

Is the tenant entitled to an Order cancelling the Notice?

### Background and Evidence

A hearing was conducted in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. Both parties were given a full opportunity to present evidence and make submissions. Service of the Application for Arbitration/Notice of was admitted. The landlord testified that the Notice to End the Tenancy was served by hand on March 31, 2014. The tenant admitted receiving it that same day.

The landlord testified that the tenant was repeatedly late in paying her rent on five occasions in April, May, September, October, and November 2013. The landlord had issued a previous Notice to End the Tenancy for Cause for repeatedly paying the rent late dated November 26, 2013. Subsequent to that the parties signed a letter dated December 4, 2013 in which they agreed that the tenant would move out on March 31, 2014. The landlord testified that the tenant failed to move out on March 31, 2014. The tenant continued to pay rent on time thereafter. The landlord issued another one Month Notice to End the Tenancy for Cause dated March 31, 2014. The grounds were the same as those in the Notice of November 26, 2013.

The tenant testified that she had paid all her rent on time since November. She also testified that she had not received any receipts from the landlord. She testified that over the years the landlord had a history of issuing Notices to End and then revoking them. She assumed it was the case with the November 26, 2013 Notice.

### Analysis

The Notice to End a Residential Tenancy relies on sections 47(1)(b) of the Residential Tenancy Act. That section provides as follows:

#### **Landlord's notice: cause**

**47** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

Section 38 of the Policy Guidelines states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

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.

I find that the late payments were all made in 2013 and the landlord had already issued a Notice in reliance upon those grounds. The parties solution in that regard was a form of mutual agreement to end the tenancy. I find that the second notice dated March 31, 2014 is not based upon any new grounds and therefore that the late payments have either already been determined by the agreement to end, or that the landlord has reinstated the tenancy by accepting rent without any qualification after March 31, 2014. In either case the landlord may not rely upon the history of late payments in 2013 in his Notice of March 31, 2014. I find that it is the landlord who has the burden of proof. That burden is strict where a landlord seeks to evict a tenant. In this case for all of the aforementioned reasons I find that the landlord has not established cause.

I have cancelled the Notice dated March 31, 2014.

Conclusion

I have cancelled the Notice dated March 31, 2014. The tenancy will continue. The tenant is awarded the sum of \$ 50.00 as reimbursement of the filing fee. She may deduct that sum from her next rental 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: June 02, 2014

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Residential Tenancy Branch

