



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF, MNDC

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated Feb. 25, 2016,
- b. A monetary order in the sum of \$1673.95
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenants by posting on February 25, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on March 11, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated Feb. 25, 2016?
- b. Whether the tenant is entitled to a monetary order and if so how much?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on September 1, 2012. Neither party provided me with a copy of the written tenancy agreement. The present rent is \$930.59 per month payable in

advance on the first day of each month. The tenant(s) paid a security deposit of \$425 on September 1, 2012.

Grounds for Termination:

The Notice to End Tenancy dated February 25, 2016 relies on the following grounds:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord

Analysis:

Policy Guideline #38 provides as follows:

The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide 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.

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. (my emphasis)**

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The landlord testified the tenant made the following late payments of rent:

- rent for January 2013
- rent for April 2013
- rent for August 2013
- rent for March 2014

- rent for April 2014
- rent for January 2015.

The late payment for January 2015 occurred after the tenant's truck was broken into in the secured parking lot and the tenant blamed the landlord. The rent was paid on or around January 9, 2015.

Policy Guideline #38 provides that 3 late payments are the minimum number to justify the grounds of "repeated late payment.) However, the Policy Guideline provides that were the landlord fails to act in a timely manner after the most recent late rent payment, the arbitrator can rule the landlord has waived its reliance on this provision. The last rent payment was over 12 months ago. I determined the landlord has waived reliance on this provision and repeated late payments is not sufficient grounds to end the tenancy.

The tenant also testified the male tenant has yelled at her on a number of difference occasions. However, the latest occasion where he yelled at her was in June 2016. The male tenant does not deny raising his voice at her on occasion. However, he testified that in one case he was responding to emergency situation involving the health of his young children. In another case it involved his response to the landlord raising her voice to the tenant. Verbal abuse and intimidation of another party is not acceptable and may be grounds to end the tenancy.

However, after considering all of the evidence I determined the landlord failed to establish sufficient grounds to end the tenancy for the following reasons:

- The landlord has failed to act in a timely manner. It has been over 7 months since the latest incident.
- The landlord failed to provide the verbal abuse was of such intensity to warrant the end of tenancy.
- The representative of the landlord acknowledged an ulterior motive. There is an ongoing dispute between the parties as to whether the landlord was responsible to pay for damage to the tenant's vehicle as a result of a break-in that occurred in the early hours of January 2, 2015. The tenant withheld the rent in order to pay for his deductible to have the damage repaired. The rent was paid in full a week later. However, the tenant refused to pay the late fee and handling charges. The Manager was receiving pressure from head office to demand payment of these sums. In one Notice the landlord demanded \$90. In a later Notice the landlord demanded \$50. The manager testified she was afraid the tenant would yell at her. The landlord failed to provide a sufficient explanation as to why the landlord

did not simply bring a claim against the tenant for the amount owing rather than resorting to the service of a one month Notice relying on incidents that were other 7 months old.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated February 25, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Tenant's application for a Monetary Order:

The tenant seeks a monetary order in the sum of \$1673 which includes the following:

- \$300 for the deductible
- \$219 for replace a portable DVD player
- \$1000 to replace 100 C.D. stolen
- \$75 to replace 5 DVD stolen
- \$59.95 to replace FM transmitter stolen
- \$20 for replace a 12 volt adapter.

After carefully considering all of the evidence I determined the tenant has failed to prove the landlord is responsible for this loss for the following reasons:

- There is no evidence to prove that any employee of the landlord was involved.
- Neither party produced a copy of the tenancy agreement. There is no evidence to prove that the landlord was warranted the security of the underground parking.
- The information provided indicates that parking was not charged for. The Procedure Statement provides "Parking is a privilege as we do not charge a fee – it is not included in your rent – it is a perk."
- The tenant failed to prove the landlord was negligent. In the evening of December 29, 2014 the power was cut to the underground parking by a third party. The theft occurred in the early hours of the morning of January 2, 2015. The problem was not repaired until January 6, 2015. The tenant failed to prove this was an unreasonable delay. Further, I do not accept the submission of the tenant that in such a situation the landlord was obligated to hired security for the underground parking..

As a result I order that the application for a monetary order be dismissed without leave to re-apply.

The tenants paid a \$100 filing fee. They were successful with their application to cancel the Notice to End Tenancy but were unsuccessful with their application for a monetary order. I order that the landlord pay to the tenants half of the cost of the filing fee or the sum of \$50 such sum may be deducted from future rent.

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: April 15, 2016

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Residential Tenancy Branch

