



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing and no issues were raised with respect to service of the application or evidence.

### Issue to be Decided

Should the notice to end tenancy be set aside and if it should, is the landlord entitled to an order of possession?

### Background and Evidence

The facts are not, for the most part, in dispute. The tenancy began in 1995 and the tenant is currently required to pay \$912.41 in rent in advance on the first day of each month. On February 19, 2016, the parties were involved in another dispute resolution proceeding as a result of which the landlord was granted an order of possession and a monetary order. The landlord testified that they inadvertently reinstated the tenancy by failing to indicate that rent accepted after the order of possession was granted had been accepted for use and occupancy only. The parties agreed that the tenant was served with a one month notice to end tenancy for cause (the "Notice") on March 14, 2016. The Notice alleges that the tenant has been repeatedly late paying rent.

The landlord submitted an accounting ledger showing that that since January 2015 the tenant has paid rent on 12 occasions, although she was only charged a late payment fee on 9 occasions. The tenant testified that in August 2015 the landlord asked her to stop submitting cheques and pay her rent via bank transfer or debit machine. She stated that she was not always able to get to the office when it was open to effect a debit payment and that this accounted for late payments between August and December. The records show that in August rent was paid on August 11, In September

it was paid on September 21, in October it was paid on the 29<sup>th</sup>, in November it was paid on November 2 and in December rent was paid on December 9. The parties agreed that in January 2016, the landlord told the tenant that she could pay rent via cheque. The records show that the January rental payment was made in two parts on January 4 and 8<sup>th</sup>.

The tenant testified that she experienced some difficulties with her finances and had difficulty paying rent on time for a while, but stated that she was no longer in arrears. The tenant also suggested that the landlord had waived their right to rely on this ground to end the tenancy because they had told her that it was “not unknown for them to change their minds” about ending a tenancy. She acknowledged that their statements were not a guarantee of anything, but she believed her tenancy was secure. The landlord acknowledged having made this statement but clarified that they had qualified it by saying that there was a possibility the tenancy could continue if the balance was paid before a certain date.

### Analysis

I find that the tenant received the Notice on March 14, 2016. First addressing the tenant’s argument that the landlord was barred from ending the tenancy by their statements to her, I find that the landlord did not tell her that her tenancy was secure. Rather, they held out some hope that in certain circumstances they would entertain a continuation of the tenancy. The tenant herself acknowledged that she knew the landlord had not made a guarantee. I find that these statements do not act as a bar to the landlord proceeding with this Notice.

The tenant is obligated under the terms of the tenancy agreement to pay her rent on or before the first day of each month. Residential Tenancy Policy Guideline #38 provides that 3 late payments of rent are sufficient to found a notice to end tenancy on the ground of repeated late payment of rent. In this case, the tenant has paid rent late 12 times in 15 months. Even if I were to accept that the 5 payments from August – December were late because the tenant wasn’t able to access the debit machine during office hours, there would still be 7 late payments for which there is no allegation that the landlord was in some way responsible for the late payment. Further, the parties agreed that the landlord requested that payment be made using *either* debit or a bank transfer. The tenant provided no explanation as to why she could not transfer money directly into the landlord’s bank account.

I find that the landlord has established grounds to end the tenancy and I dismiss the tenant’s application. Under section 55 of the Act, when I dismiss a tenant’s claim to cancel a notice to end tenancy, I must grant the landlord an order of possession. I

therefore grant the landlord an order of possession which is effective on May 31, 2016. The landlord must serve the order on the tenant and should she fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant's claim is dismissed and 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: April 27, 2016

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Residential Tenancy Branch