



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RP, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord HN attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord HN (the "landlord") confirmed she had authority to speak on behalf of landlord KG, who was not present.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Sever

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would

end pursuant to the landlord's 1 Month Notice. Accordingly I find the remaining portion of the tenant's application must be severed.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

As per the testimony of the parties, this tenancy, based on an oral agreement began on October 1, 2017. Rent in the amount of \$1,000.00 was payable each month until the parties came to a new agreement that rent would be reduced to \$800.00 in exchange for repairs made to the unit, by the tenant. The parties confirmed that the tenant remitted a pet deposit in the amount of \$400.00 at the start of tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The parties provided conflicting testimony in relation to the due date of rent each month. The tenant contends that rent is payable on the first of each month whereas the landlord argues it is payable on the last day of each month. In an effort to support her position, the landlord has provided a text message dated June 4, 2018 in which she tells the tenant, "rent is always due last day of the month..."

On September 14, 2018 the landlord issued a 1 Month Notice with an effective date of October 15, 2018. The tenant confirms personal receipt of the 1 Month Notice on Friday, September 14, 2018. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant is repeatedly late paying rent
- the tenant has allowed an unreasonable number of occupants in the unit/site
- the tenant or a person permitted on the property by the tenant has not done required repairs of damage to the unit/site

The landlord testified to five instances in which the tenant did not pay rent by the last day of the month. The landlord has submitted relevant copies of e-transfer receipts. The landlord testified that although the tenancy agreement was for the tenant, the tenant's son and their dog, the unit now houses two additional adults and one additional dog. The landlord testified that the tenant has not completed the list of repairs he committed to on June 9, 2018.

In reply, the tenant testified that he only failed to pay rent by the first of each month, on two occasions. The tenant testified that the tenancy did not restrict the number of occupants and further the unit is a 2 bedroom unit spacious enough to accommodate three adults, two dogs and a child. The tenant testified that he has conducted a lot of repairs to the unit but now asserts that it is not his duty as a tenant to conduct repairs.

### Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant is repeatedly late paying rent. The onus is on the landlord to prove the tenant is late paying rent, a minimum of three times. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement.

In order to meet this ground of the 1 Month Notice, the landlord in this case, must first prove rent is due on the last day of each month. Upon review of the documentary evidence, testimony of the landlord and based on a balance of probabilities I find that rent is payable on the last day of each month. The e-transfer receipts establish that the tenant paid rent by the last day of each month for the first six months of tenancy. The text message, sent by the landlord at the eighth month mark, I find was in response to the tenant's failure to pay rent on time.

The e-transfer receipts show the tenant paid rent following the last day of the month, a total of five times. Based on the above, I find the tenant has repeatedly paid rent past the date indicated in the tenancy agreement. Accordingly, I find the landlord has met the onus and dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, and the tenant's application is dismissed, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As the tenancy is set to end, the severed portion of the tenant's application is dismissed without leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

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: November 05, 2018

---

Residential Tenancy Branch