



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code          CNC MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 12, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated July 30, 2019 (the "One Month Notice"); and
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was accompanied by R.Z., a witness who did not participate in the hearing. The Landlord attended the hearing. Both the Tenant and the Landlord provided affirmed testimony.

The Tenant testified the Notice of a Dispute Resolution Proceeding package was served on the Landlord by registered mail. The Landlord acknowledged receipt.

The Tenant also testified that a documentary evidence package was served on the Landlord by leaving a copy at the front door of the Landlord's residence. The Tenant testified service was witnessed and provided a photograph of the envelope containing the documents. The Landlord denied receipt. However, I find it is more likely than not that the evidence was served on and received by the Landlord as alleged by the Tenant.

The Landlord submitted documentary evidence in response to the Application. The Landlord testified it was served on the Tenant by registered mail on September 20, 2019. Canada Post documentation was submitted in support. The Tenant denied receipt. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenant is deemed to have received the Landlord's evidence package on September 25, 2019.

No further issues were raised with respect to service or receipt of these packages during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the request for an order cancelling the One Month Notice, with leave to reapply for the remainder of the relief sought as appropriate.

#### Issue to be Decided

Is the Tenant entitled to an order cancelling the One Month Notice?

#### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on February 1, 2018. The parties confirmed rent in the amount of \$1,200.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice on the basis that the Tenant has been repeatedly late paying rent. The Application confirms receipt of the One Month Notice on August 2, 2019.

The Landlord testified that the Tenant did not pay rent when due as follows:

<b>Rent due</b>	<b>Rent received</b>
November 1, 2018	November 11, 2019
February 1, 2019	February 2, 2019
June 1, 2019	July 1, 2019
July 1, 2019	July 5, 2019

The Landlord submitted a letter from his bank confirming the “returned cheques” on November 6, 2018, and on June 6, and July 8, 2019, were due to a stop payment. The Landlord also submitted a hand-written receipt confirming payment of rent in cash on February 2, 2019. The Landlord referred to section 47 of the *Act* and submitted it is a tenant’s responsibility to pay rent, not a landlord’s responsibility to collect rent.

In reply, the Tenant blamed the Landlord and the Landlord’s bank for the late payments in November 2018, February 1, 2019, and June 1, 2019. With respect to the late payment in November 2018, the Tenant testified the Landlord’s bank was responsible. In support, the Tenant submitted a hand-written statement which indicated there were sufficient funds available in the Tenant’s account and that the cheque was “incorrectly processed” by the Landlord’s bank. The Tenant acknowledged that his bank put a stop payment on the cheque due to the error made by the Landlord’s bank.

With respect to the late payment in February 2019, the Tenant testified the Landlord ran out of cheques and suggested the Landlord could have called earlier. He did not dispute the payment was made in cash on February 2, 2019.

With respect to the late payment in June 2019, the Tenant testified that he deposited sufficient funds into his account in May 2019. He then went to visit his daughter. However, when the Tenant returned, he discovered that rent had not been paid. When he realized rent had not been paid, the Tenant made the payment immediately.

With respect to the late payment in July 2019, the Tenant accepted responsibility.

The Tenant also requested the return of the \$100.00 filing fee paid to make the Application.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for the reasons described therein. In this case, the One Month Notice was issued on the basis identified above. However, section 47(4) confirms that a tenant who receives a notice to end tenancy under this section has 10 days to dispute the notice by making an application for dispute resolution. Section 47(5) of the *Act* confirms that failure to do so results in the conclusive presumption that the tenant accepts that the tenancy ends on the effective date of the notice to end tenancy and must vacate the rental unit. I find the Tenant was served with and received the One Month Notice on August 2, 2019 and disputed it on time on August 12, 2019.

Section 47(1)(b) permits a landlord to take steps to end a tenancy for repeated late payments of rent. Policy Guideline #38 provides assistance when determining whether or not a tenant has been repeatedly late paying rent. It 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.*

*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.*

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to conclude the tenancy should end on the basis of repeated late payments of rent. The Landlord has alleged 4 late payments since November 1, 2018, a period of more than 11 months. As noted in Policy Guideline #38, a minimum of 3 late payments are required. While the Tenant acknowledged the late payment in July 2019, he provided sufficient evidence of exceptional circumstances that called into question the reason for the late payments on November 2018 and June 2019. I also note there was no evidence to suggest any rent is outstanding. Rather, the Tenant has applied to recover an overpayment. Balancing the evidence and submissions of the parties, I find the Tenant's Application is successful. The One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenant is entitled to recover the filing fee paid to make the Application. I order that the Tenant may retain \$100.00 from a future rent payment at the Tenant's discretion.

***The Tenant is cautioned to ensure all future rent payments are made on or before the 1<sup>st</sup> day of each month, in accordance with the tenancy agreement and section 26 of the Act.***

### Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: October 4, 2019

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Residential Tenancy Branch