



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

The tenants apply to cancel a one month Notice to End Tenancy. The Notice claims the tenants have been repeatedly late paying rent. Such a claim, if proved, is a lawful ground for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the “*Act*”).

It is apparent that the form of Notice used by the landlord is an old, expired form. It is not a Notice “in the approved form” which a landlord must use according to s. 52(e) of the *Act*. In particular, the form does not include the mandatory portion entitled “Details of Dispute” and which must contain particulars of the alleged late rent payments.

The landlord has attempted to give particulars by handwriting some dates and other information in the top portion of the Notice. Frankly, the writing is not particularly legible.

An arbitrator is granted the power under s. 68(1) to amend a Notice if the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. In this case I am not persuaded the tenants should have known all the months the landlord has claimed they were late paying rent and, in any event, I determine that it is not reasonable to amend the Notice. The landlord had an earlier Notice to End Tenancy given to these same tenants dismissed for the same reason: the use of an old, out of date Notice.

I allow the tenants’ claim and dismiss the Notice to End Tenancy for repeated late payment of rent dated December 11, 2019.

As I have made no determination about the allegation of repeated late payment made in that Notice, the landlord is free to issued and serve another Notice for repeated late payment of rent based on the same months in which rent was claimed to be late.

About two weeks prior to hearing, the landlord filed a Notice in this matter which is in the current approved form, in an effort to remedy the faultiness of the December 11 form. It appears it might claim late payment of rent for different months than claimed in the Notice in question. I determine that this is not the equivalent to the landlord issuing and serving a new Notice. She must take a new Notice in the current approved form (perhaps the one she has filed in this matter) and serve the tenants with it after this hearing.

The parties were also informed of the common law principle that the obligation is on a debtor to prove payment to his creditor and that in the matter landlord and tenant affairs the tenant is the debtor.

As the tenants have been successful I award them recovery of their \$100.00 filing fee and I authorize them to reduce their next rent due by \$100.00 in full satisfaction of the fee.

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: January 23, 2020

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Residential Tenancy Branch