



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice").

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing materials and I admitted them into evidence without any objection.

The hearing process was explained to the parties. The parties were affirmed and the parties were instructed not to make any unofficial recording of the proceeding.

### Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?
2. If the 1 Month Notice is upheld, when should the Order of Possession take effect?
3. Award of the filing fee.

### Background and Evidence

The tenancy started on December 1, 2013 for a fixed term of six months and then continued on a month to month basis thereafter. Initially, the tenant was required to pay rent of \$1100.00 on the first day of every month; however, the rent has increased a number of times since the tenancy commenced and starting January 1, 2020 the tenant's current rent obligation is to pay \$1276.00 on the first day of every month.

On December 17, 2020 the landlord issued a letter to the tenant notifying the tenant that rent had not been received for December 2020 and to satisfy the rental arrears and pay a late fee of \$25.00. The tenant testified that he did not receive the December 17, 2020 letter. The landlord received the rent payment for December 2020 on December 18, 2020.

For the month of February 2021, the tenant paid rent late again, on February 18, 2021.

For the month of March 2021, the landlord received a partial rent payment on March 15, 2021. The landlord issued a letter to the tenant on March 16, 2021 notifying the tenant of the rental arrears and demand to pay late fees for December 2020, February 2021, and March 2021. The tenant acknowledged he received the letter of March 15, 2021 and the tenant satisfied the arrears and late fees on March 26, 2021.

On March 17, 2021 the landlord's agent issued the subject One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenant and sent it to the tenant via registered mail. The 1 Month Notice was delivered on March 19, 2021 and the tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The 1 Month Notice has a stated effective date of April 30, 2021 and indicates the reason for ending the tenancy is because the tenant: "is repeatedly late paying rent." In the Details of Cause, the landlord wrote that there were late payments for December 2020, February 2021 and March 2021

In the landlord's written submissions, the landlord's agent submitted that the tenancy agreement clearly provides that rent is payable on the first day of every month, in clause 3 of the tenancy agreement, and clause 2 of the Addendum.

The landlord submitted that the three recent late payments is a basis for ending the tenancy for repeated late payment of rent. The landlord's agent did state the owner is willing to permit the tenant occupancy of the rental unit until June 30, 2021 to give the tenant a reasonable amount of time vacate.

The tenant's advocate submitted that this has been a seven year tenancy and the tenant has been a good tenant during that time, even working for the landlord at one point in time. The tenant's advocate submitted that the late payments were the result of an isolated incident involving unexpected payments required for a property purchase in the Philippines; however, the tenant has since taken steps to ensure he is able to meet

his rent obligations, including restructuring his vehicle loan payment and taking on additional work. The rent for April 2021 and May 2021 was paid on time and the tenant seeks to reach an agreement with the landlord so as to continue this tenancy.

The tenant testified that he and his wife had purchased a property in the Philippines as he has a child living there. The tenant submitted that in February 2020 they paid \$3750.00 to send money for the down payment and they understood that mortgage payments would not be due until a later date due to the Covid-19 pandemic, when they took possession of the property; however, the developer of the property demanded mortgage payments by the end of the year (2020) or else lose they would lose their investment. The tenant testified that he and his wife paid their power of attorney in the Philippines approximately \$7000.00 between October 2020 and February 2021.

The tenant submitted that he did his best to pay the developer and his rent for the rental unit, which he did pay albeit late. The tenant submitted he has been a good, quiet tenant without any complaints during his tenancy and he does not understand the landlord's refusal to continue the tenancy except to suspect the landlord is motivated to increase the rent for the unit.

The landlord's agent responded that she is empathetic to the tenant's financial hardship but that she is acting based on instructions from the owner who is not willing to continue the current tenancy other than to extend the deadline to vacate to June 30, 2021.

The tenant requested one more opportunity to demonstrate he will pay his rent on time going forward and agreeable to an agreement where one more late payment would result in the end of the tenancy. The landlord's agent responded that she was not authorized by the owner, at this time, to reach such an agreement.

Documentary from the landlord included a written submission and copy of: the tenancy agreement and Addendum; Notices of Rent Increase; letters of December 17, 2020 and March 15, 2021; and the 1 Month Notice.

Documentary from the tenant included a written submission and a copy of: a receipt to show payment of \$3750.00 to send money the tenant's power of attorney in the Philippines in February 2020, a receipt for payment of \$2998.00 on October 20, 2020 and \$2999.00 on December 28, 2020 to send money to the Philippines.

During the hearing, I explored an effective date for Order of Possession if the landlord were to be successful. The landlord was willing to permit the tenant occupancy until

June 30, 2021 to permit the tenant a reasonable amount of time to vacate. The tenant stated that June 30, 2021 would be too soon given his finances, family composition, and disability and the tenant requested he be permitted occupancy until August 2021 or September 2021 if the tenancy were to end.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice.

The landlord seeks to end the tenancy due to the tenant repeatedly paying rent late. The landlord pointed to late payments for the months of December 2020, February 2021, and March 2021.

Section 47(1)(b) of the Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Residential Tenancy Branch Policy Guideline 38: *Repeated Late Payment of Rent* provides information and policy statements with respect to repeated late payment of rent, as follows:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act 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.*

*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.*

It was undisputed that the tenant is obligated to pay rent on the first day of every month pursuant to the tenancy agreement and the tenant paid rent late at least three times, as follows:

- Rent for December 2020 was paid on December 18, 2020
- Rent for February 2021 was paid on February 18, 2020
- Rent for March 2021 was paid in two installments on March 15, 2021 and March 26, 2021

Based on the undisputed evidence before me, it is undeniable that the tenant was late a minimum of three times and I find the landlord acted in a timely manner after the third late payment in issuing the 1 Month Notice on March 17, 2021. As such, I am satisfied the landlord has not waived reliance on the provision of the Act that provides for ending a tenancy for repeated late payment of rent.

The tenant provided submissions that the reason he was late paying rent was due to paying a developer in the Philippines so as to not lose their investment in a property in the Philippines. While I appreciate the tenant found himself in a difficult financial position, the tenant's other financial obligations and/or debts do not form an exemption to the requirement to pay rent on time. Also, considering the tenant was late three times in a span of four months, I find the tenant's decision to satisfy the other debts does not amount to an unexpected error or unforeseeable consequence. Rather, it would suggest to me that the tenant's efforts to restructure his vehicle loan payment and take on extra work were not undertaken soon enough so as to avoid paying rent late three times.

The tenant referred to the Covid-19 pandemic as being, at least in part, the reason for experiencing the financial difficulty; however, only late payments made during the "affected period" (March 18, 2020 through August 17, 2020) are excused from being considered late and this case revolves around late payments outside of that period.

The tenant's history of being a good, long-term tenant without receiving any complaints may be considered by the landlord in deciding to continue the tenancy; however, an

otherwise good tenant history is not a basis for me to excuse the tenant's late payments and conclude the landlord is without a basis for ending the tenancy for repeated late payment of rent and I cannot force the landlord to do so either. Further, a landlord does not need a "good faith" intention to end a tenancy for cause and the tenant's theory that the landlord is motivated to increase the rent is not relevant to the matter before me.

For all of the reasons provided above, I find I am satisfied the landlord had a basis to issue the 1 Month Notice for repeated late payment of rent. Accordingly, I uphold the 1 Month Notice dated March 17, 2021 and I dismiss the tenant's request that I cancel the it.

Section 55(1) of the Act provides as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have upheld the 1 Month Notice and dismissed the tenant's application to cancel it. Upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Given the date of this decision, I find the landlord's willingness to permit occupancy until June 30, 2021 is reasonable and I provide the landlord an Order of Possession effective on that date.

I make no award for recovery of the filing fee to the tenant.

### Conclusion

The 1 Month Notice is upheld and the tenant's Application for Dispute Resolution is dismissed.

The landlord is provided an Order of Possession effective on June 30, 2021 under section 55(1) of 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: May 05, 2021

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Residential Tenancy Branch