



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** Tenant: FFT, CNC, LRE  
Landlord: OPC

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55

The tenant requested:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications and evidence.

The tenant confirmed receipt of the 1 Month Notice dated February 11, 2021, which was sent to the tenant by way of registered mail on the same date. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the landlord's 1 Month Notice on February 16, 2021, 5 days after mailing.

### **Issues**

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

Is the tenant entitled an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for their application?

### **Background and Evidence**

This month-to-month tenancy began on May 1, 2019, with monthly rent currently set at \$1,200.00, payable on the first of the month. No security deposit was collected for this tenancy.

The landlord served the tenant with a 1 Month Notice on February 11, 2021 on the following grounds:

1. The tenant is repeatedly late paying rent.

It is undisputed by both parties that despite the fact that rent is due on the first of every month, the tenant had only started to pay their rent on time after the issuance of the 1 Month Notice on February 11, 2021. The landlord submitted a detailed summary of when rent had been paid every month, and the amounts paid. The tenant argued that the landlord had no right to end this tenancy on the grounds of late rent payments as the landlord has never served her with any 10 Day Notices for Unpaid Rent, or written notice that the late rent payments were not acceptable, and that these late rent payments could possibly result in a Notice to End Tenancy.

The landlord does not dispute that despite the history of late rent payments, and partial instalments, that no 10 Day Notices or written warnings had been issued. The landlord gave several examples, as summarized in the log and text messages submitted in evidence, of when the tenant would communicate with the landlord that she would be paying her rent on a later date, but the tenant would still fail to pay rent by that date. The landlord testified that they had never given permission for the tenant to make late rent

payments. The landlord testified that they lived some distance away, and did not serve the tenant with any Notices to End Tenancy prior to the 1 Month Notice.

The tenant also applied for an order to suspend or set conditions on the landlord's right to enter the rental unit. The tenant submits that the landlord's property manager and cousin, LL, has entered the tenant's rental unit without notice, and had stolen items from the tenant and made inappropriate sexual advances towards the tenant. The tenant states that LL had also entered the tenant's neighbour's home as well without the tenant's permission.

### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

The tenant does not dispute that rent payments were made repeatedly late, but testified that the landlord never made it clear that it was an issue, especially to the extent that the late payments would result in the end of the tenancy.

The landlord disputes ever giving the tenant permission to make late rent payments. The landlord included text message communication between the parties as well as a detailed log, which the landlord feels supports the fact that tenant would ask for extensions, and still pay rent late.

I have reviewed the evidence and testimony before me, and I find that despite the fact that rent is due on the first of the month, there is a long history of repeated late rent payments by the tenant. According to the log submitted by the landlord, the tenant has been late paying their monthly rent since the beginning of the tenancy in May of 2019, up to the month the 1 Month Notice was issued in February of 2021. Furthermore, despite the long history that dates back to the beginning of the tenancy, the landlord has not served the tenant with any written warnings about the repeated late rent payments.

It was undisputed that only after the tenant was served with the 1 Month Notice, the tenant stopped making late rent payments.

I find that the legal principle of estoppel applies in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

As shown by the evidence and testimony before me, the landlord has established a pattern of accepting late rent payments from the tenant since the beginning of this tenancy, and over a long period of time until the landlord had served the tenant with the 1 Month Notice. I find that no prior warning letters or Notices to End Tenancy had been served to the tenant prior to February 11, 2021, or notice that the landlord was changing their conduct and was now going to strictly enforce the requirement that monthly rent be paid in full and on time as required by the *Act* and tenancy agreement. In the absence of written notice to the tenant informing them that late rent payments were no longer acceptable, and based on the legal doctrine of estoppel, I find that the landlord has not met the burden of proof to support that they have grounds to end the tenancy for the reason provided on the 1 Month Notice, and accordingly I am allowing the tenant's application for cancellation of the 1 Month Notice dated February 11, 2019. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

The tenant also applied for an order to suspend or set conditions on the landlord's right to enter the tenant's rental unit. As the tenant's neighbour has not filed an application, I can only make an order in relation to the tenant applicant's specific rental unit. In consideration of the evidence and testimony before me, I am not satisfied that the tenant had provided sufficient evidence to support the allegations made by the tenant, and accordingly this portion of the tenant's application is dismissed without leave to reapply.

I allow the tenant to recover the filing fee for this application. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

## **Conclusion**

I allow the tenant's application to cancel the 1 Month Notice dated February 11, 2019. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to recover the filing fee for this application. I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remaining matters without leave to reapply.

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: June 2, 2021

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Residential Tenancy Branch