



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 22, 2021 and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The parties confirmed they were not making any unauthorized recording of the hearing, in compliance with the Rules of Procedure 6.11.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession, pursuant to section 55 of the Act?

### Background and Evidence

The tenancy began on March 1, 2019. Rent in the amount of \$800.00 was payable on the **first** of each month. The tenant paid a security deposit of \$400.00.

On March 2, 2020, the tenant filed a previous application for relief under the Act, which included a notice to end tenancy for cause. On May 7, 2020, the tenant's application was heard, and the parties entered into a settlement agreement to end the tenancy.

The parties agreed that the Notice subject to this hearing, was served on the tenant on February 22, 2021, indicating that the tenant is required to vacate the rental unit on April 1, 2021.

The reason stated in the Notice, was that the tenant has:

- Tenant is repeatedly late paying rent;
- Tenant has allowed an unreasonable amount of occupants in the rental unit;
- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:
  - Damage the landlord's property
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The parties were informed at the hearing that I will not consider any evidence that was related to the prior hearing. Therefore, I will only consider the testimony and evidence from the parties that have occurred after May 7, 2020. The parties were also informed that I do not need to consider every reason listed in the Notice, if I am satisfied that one of the reasons stated in the Notice has been proven.

I note the Ministerial Order No. M089, issued on March 30, 2020, banning evictions was lifted on August 18, 2020. However, late payments of rent during the time period of March 18, 2020 to August 17, 2020 cannot be considered when considering the issue of late payments of rent. Any late payments after August 17, 2020, can be considered.

The landlord testified that the tenant has continued to pay rent late, even after they were served with the prior notice to end tenancy. The landlord stated that rent was late on the following dates.

- Rent for September 2020 was paid on September 9, 2020;
- Rent for November 2020 was paid on November 2, 2020;
- Rent for January 2021 was paid on January 27, 2021; and since the Notice was issued;
- Rent for June 2021 was paid on June 9, 2021.

The tenant does not dispute the dates the rent was paid. The tenant stated at the start of the tenancy there was a verbal agreement that rent could be a few days late. The tenant further submits that the landlord agreed for the above months that rent could be late by text message.

The landlord argued there was never any agreement that the rent could be paid late.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has been repeatedly late paying rent.

In this case, the tenancy agreement states rent **must** be paid on or before the 1<sup>st</sup> day of each month. I do not accept the tenant's evidence that there was any verbal agreement when the tenancy commenced that they could pay their rent late. If such was the case, it would have been reasonable to have such an agreement written in the tenancy agreement.

Further, I find this is unreasonable for the tenant to believe such an agreement was in existence when the last hearing on May 7, 2020, was also on this issue of late payments of rent. The tenant had to of known rent was required to paid in accordance with their tenancy agreement.

Furthermore, I do not accept the tenant's evidence of the text messages that they have submitted as evidence, is an agreement for the tenant to be allowed to pay the rent late or that the landlord's was giving up their right to end the tenancy pursuant to section 47 of the Act. Often when a tenant does not pay their rent on time the landlord will indicate "okay" because they have no other option at the time and are entitled to accept rent late. However, this does not take away the landlord's right to end the tenancy for repeated late payments.

Further, since the Notice, subject to this hearing was issued the tenant continues to pay their rent late. I find It appears for the actions of the tenant that they have no intention to comply with their tenancy agreement, or the Act.

Based on the above, I find the tenant is repeatedly late paying the rent. I find the Notice, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlord have accepted occupancy rent for the month of June 2021, I find it appropriate to extend the effective vacancy date in the Notice to June 30, 2021, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **June 30, 2021, at 1:00 P.M.**, pursuant to section 55 of the Act. This order must be served on the tenant and may be filed in the Supreme Court.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

### Conclusion

The tenant's application to cancel the Notice, is dismissed. As the tenant was no successful with their application, I decline to award the tenant the cost of the filing fee.

The landlord is granted an order of possession pursuant to section 55 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: June 15, 2021

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Residential Tenancy Branch