



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT  
                             OPC, FFL

### Introduction

The Tenant brings an application to cancel a One-Month Notice to End Tenancy signed June 19, 2021 pursuant to s. 47 of the *Residential Tenancy Act* (the “*Act*”) and for return of their filing fee.

The Landlord brings a cross-application for an order for possession pursuant to s. 55 of the *Act* and for return of their filing fee.

C.W. appeared on her own behalf as Tenant. J.G. and A.G. appeared as agents for the corporate Landlord.

The parties affirmed to tell the truth during the hearing and were given a full opportunity to be heard, to present sworn testimony, question the other party, and to make submissions. I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Landlord indicated that the One-Month Notice to End Tenancy signed June 19, 2021 (the “One-Month Notice”) was sent to the Tenant via registered mail on June 19, 2021. The Landlord has provided tracking information indicating that the One-Month Notice was received by the Tenant on June 24, 2021, which was confirmed by the Tenant. I find that the One-Month Notice was served in accordance with s. 88 of the *Act* and received by the Tenant on June 24, 2021.

The Landlord advised having served the Notice of Dispute Resolution for their application and their evidence on the Tenant by way of registered mail sent on July 21,

2021. I find that the Landlord's Notice of Dispute Resolution and evidence was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem the Tenant to have received the Landlord's application materials on July 26, 2021.

#### Preliminary Issue – Tenant's Application

The Tenant advised that she had not served a copy of her Notice of Dispute Resolution or her evidence on the Landlord. The Tenant indicated she held the belief that by submitting the documents to the Residential Tenancy Branch, they would be served on the Landlord. I advised the Tenant of her obligation to serve the documents pursuant to the Rules of Procedure. I accept that the Tenant's failure to comply with the Rules of Procedure was inadvertence and was not an attempt to deceive or intentionally prejudice the Landlord.

Given the subject matter of the cross-applications touches upon the cancellation of a notice to end tenancy or an order for possession pursuant to the notice, I indicated during the hearing that I would adjourn the matter to provide additional time to the Tenant to serve her application materials. I did so on the basis that the two applications are intimately linked to one another and must be heard together. Further, dismissing the Tenant's application with leave to reapply would mean her application to cancel the notice would be beyond the time limits set by s. 47(4) and would trigger the conclusive presumption of s. 47(5).

The Landlord indicated their desire to proceed with hearing and wished for no further delay given the One-Month Notice was issued on June 19, 2021 and we are now into November. The Landlord consented to receiving the Tenant's application materials by way of email sent during the hearing so that the hearing could proceed as scheduled. Though this procedure is irregular, I do not find it to be prejudicial to the Landlord on the basis that the Landlord consented to the arrangement, the Tenant's claim dealt with essentially the same subject matter as the Landlord's claim, and the Tenant's evidence was not voluminous and was comprised of several rent receipts and the tenancy agreement.

The Landlord confirmed receipt of the Tenant's application and evidence during the hearing. I find that the Tenant's application materials were sufficiently served pursuant to s. 71(2) of the *Act*.

Preliminary Issue – Amending Style of Cause

At the outset of the hearing, I clarified with the Landlord's agents who, in fact, was the Landlord. The Landlord confirmed that the corporate Landlord, as listed in the tenancy agreement, is the correct Landlord. The Tenant raised no objections with respect to the amendment. Accordingly, I amend the application pursuant to Rule 4.2 of the Rules of Procedure such that the style of cause reflects the corporate Landlord as listed in the tenancy agreement.

Issue(s) to be Decided

- 1) Whether the One-Month Notice signed June 19, 2021 should be cancelled?
- 2) If not, is the Landlord entitled to an order for possession?
- 3) Whether either party is entitled to return of the filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the Tenant's tenancy of the rental unit began on May 1, 2019. It appears the rental unit is within a multi-unit residential property and the Tenant moved into the residential property sometime before May 1, 2019 but confirmed her tenancy with respect to the subject rental unit began on May 1, 2019. Rent is currently \$1,200, which is due on the first day of each month. A written tenancy agreement was provided by the parties.

There is some disagreement between the parties respecting the amount of the security deposit and whether there is a pet damage deposit. The written tenancy agreement says there's a \$600.00 security deposit. The Tenant indicated that she paid a security deposit of \$450.00 and a pet damage deposit of \$450.00. Given the subject matter of the cross-applications, I need not make any findings with respect to the security deposit and/or the pet damage deposit.

The Landlord issued the One-Month Notice on the basis that the Tenant is repeatedly late in paying rent. The One-Month Notice was received by the Tenant on June 24, 2021 and they made their application to cancel the notice on July 5, 2021.

According to the One-Month Notice, the Tenant has been late 23 times since her tenancy began on May 1, 2019. The Landlord provides a ledger as proof of the various late payments over the years. According to the Landlord, the ledger indicates when rent is due and when the rent is received from the Tenant, not when it is deposited into the Landlord's bank account.

The Landlord has issued two 10-day Notices to End Tenancy, one on September 2, 2020 and the other on March 3, 2021, due to non-payment of rent. According to the Landlord's ledger, in the 6 months prior to issuing the One-Month Notice the Tenant was late paying rent in May 2021, March 2021, and February 2021. The Landlord acknowledged that since issuing the One-Month Notice, the Tenant has not been late in paying her rent.

The Tenant acknowledges being late in paying her rent on occasion. However, the Tenant calls into question the accuracy of the Landlord's ledger and has provided various rent receipts from the Landlord as proof that the ledger is inaccurate. Most of the rent receipts predate the past 6 months but do indicate rent was paid on dates that are different than the ledger provided by the Landlord. For example, the Landlord's ledger indicates the Tenant paid rent for August 2019 on August 8, 2019 whereas the Tenant's receipt indicates rent was paid on July 27, 2019.

The Tenant further says that whenever she was going to be late paying rent she would speak with the resident property manager, G.B., to notify him that she would be late. The Tenant indicates that G.B. would agree to receiving rent late. The Tenant provides no documentary evidence of these conversations with G.B.

G.B. was not called as a witness and the Landlord's agents could neither confirm nor deny the conversations took place as it was outside of their knowledge. The Landlord insisted that there is a history of late rent payments as evidenced by the ledger they have provided.

### Analysis

The Tenant applies to cancel the One-Month Notice and the Landlord seeks an order for possession pursuant to the One-Month Notice. Pursuant to Rule 6.6, the Landlord bears the onus of showing that the notice complies with the *Act* and the grounds set out in the notice exist.

A tenancy may be ended under s. 47(1)(b) of *the Act* if a tenant is repeatedly late in paying rent. Policy Guideline 38 indicates that three late payments are the minimum number of sufficient to justify a notice under s. 47(1)(b). The late payments need not be consecutive, however, if there is a significant gap between the late payments, an arbitrator may determine that the tenant is not "repeatedly" late. Further, a landlord who fails to act in a timely manner after the most recent late payment may be found to have waived their claim for strict compliance of this section of the *Act*.

The Tenant applied to cancel the One-Month Notice on July 5, 2021, which is 11-days after receiving the notice on June 24, 2021. Pursuant to s. 47(4), the Tenant has 10-days to apply to cancel the notice. Upon review of the time period, the 10<sup>th</sup> day to dispute the notice, July 4, 2021, fell on a Sunday. The Rules of Procedure makes clear within the definition of "Days" that if the time to do an act at a government office expires on a day the office is not open, the time is extended to the next business day. The definition within the Rules of Procedure is based on s. 25(4)(a) of the *Interpretation Act*. Accordingly, the Tenant's application was on the last day permitted, being Monday July 5, 2021, and s. 47(5) does not apply.

I have reviewed the ledger provided by the Landlord and the receipts provided by the Tenant. I accept there are discrepancies between both records, which causes me to doubt the accuracy of the Landlord's ledger. In particular, the rent ledger indicates that the Tenant paid rent on May 3, 2021 whereas the Tenant shows she paid \$1,100 by way of e-transfer on May 1, 2021. I accept that the Tenant's records show partial payment for May 2021, but it does not explain the discrepancy between the records as partial payments are reflected elsewhere in the Landlord's ledger.

In addition, the Tenant's evidence is that she communicated with G.B. when she would be late in paying rent. It is her affirmed evidence that G.B. consented to receiving late rent. The Tenant's evidence is not directly disputed by the Landlord.

I also place weight on the fact that the One-Month Notice was issued on June 19, 2021. Both the Landlord's ledger and the Tenant's records indicate the Tenant paid rent for June in May, with the ledger saying May 25, 2021 and the Tenant's e-transfer being sent on May 21, 2021. There does not appear to be a timely connection between issuing the One-Month Notice on June 19, 2021 and the last late payment which occurred in March 2021.

I find that the Landlord has failed to demonstrate that the Tenant is repeatedly late in paying rent. I do not accept that the ledger accurately reflects when payments have been received from the Tenant, with the inaccuracies being found as recently as late May 2021. Further, I place significant weight on the Tenant's undisputed evidence that G.B. consented to receiving rent late, which indicates that the Landlord's agent acquiesced to the late payment. The Landlord cannot insist on the strict compliance of paying rent when due as per the tenancy agreement when there is appears to be an agreement that late payment was acceptable.

Accordingly, the One-Month Notice signed June 19, 2021 is cancelled. The tenancy shall continue until it is ended in accordance with the *Act*.

### Conclusion

Pursuant to s. 47 of the *Act*, I hereby cancel the One-Month Notice signed June 19, 2021. The tenancy shall continue until it is ended in accordance with the *Act*.

As the Tenant was successful on their application, they are entitled to their filing fee from the Landlord. Pursuant to s. 71(2), the Tenant may withhold \$100.00 from future rent on one occasion in full satisfaction for a return of their application 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: November 03, 2021

---

Residential Tenancy Branch