



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Peak Property Management Incorporated  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

For the Tenant: CNC, FFT  
For the Landlord: OPC, FFL

### **Introduction**

The Tenant filed an Application for Dispute Resolution on August 2, 2021 to dispute the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) issued by the Landlord’s agent on July 23, 2021. They also seek reimbursement of the Application filing fee.

An Landlord’s agent filed a cross-Application for Dispute Resolution (the “cross-Application”) on August 18, 2021 seeking an order of possession of the rental unit. This is following their service of the One-Month Notice to the tenant on July 23, 2021. Additionally, they applied for reimbursement of their Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 6, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions. Both parties attended the hearing, and I provided each present oral testimony and made submissions during the hearing.

At the outset of the hearing, both parties confirmed they received notice of the other’s Application. With confirmation from either party, I ensured that they disclosed all of their prepared documentary evidence to the other in a timely fashion in advance of the hearing.

### Preliminary Matter

Present for the Landlord/Owner in the hearing was their agent, who issued the One-Month Notice on July 23, 2021. The Landlord/Owner's authorization, dated July 19, 2021, appears in the Landlord's evidence, authorizing this agent to act on their behalf to "represent [their] interests in dealing with matters pursuant to the Residential Tenancies [sic] Act or any other Act or Statute related to the tenancy. . ."

A representative of the property management company who previously communicated with the Tenant appeared in the hearing as a witness on the Landlord's behalf. They clarified the current correct name for the property management company. The Landlord was so named as the former company handling these responsibilities on behalf of the Landlord on the One-Month Notice, on the Tenant's Application in response to the One-Month Notice, and the Landlord's own Application. The property manager witness clarified that the current company merged with the former approximately 4 years ago.

A prior communication between the witness and the Tenant shows the name of the actual Landlord was unknown to the Tenant who communicated only with the property management company. The actual Landlord/Owner is that same individual who then authorized the agent to act on their behalf as "Owner's Agent".

Based on the witness' own clarification on the name of the property management company, I have amended the Tenant's and Landlord's Applications to reflect this. This is in line with the agent naming the property management company as the "Landlord" on the One-Month Notice and their Application for Dispute Resolution.

### Issues to be Decided

Is the Tenant entitled to a cancellation or withdrawal of the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

Both parties submitted a copy of the tenancy agreement. The tenancy started on May 1, 2013, with the then-current property management company. At the start of the agreement the rent amount was \$1,350, increasing over time to the current amount of \$1,435. The agreement shows the rent payment date is the 1st of each month. The agreement specifies that “An additional charge of \$25 will be assessed to the tenant in the event the rent becomes overdue.” Speaking to this specific term in the hearing, the Tenant could not recall ever having paid this fee for this reason in the past.

Both parties provided a copy of the One-Month Notice document, signed by the Landlord’s agent on July 23, 2021. This gave the final move-out date of August 31, 2021. Page 2 of the document has the following reason: “Tenant is repeatedly late paying rent.” The details are on that same page: “Tenants have been consistently late paying rent over the past twelve months: October 2020 / November 2020 / December 2020 / January 2021 / March 2021 / May 2021 / June 2021 and July 2021.”

The Landlord’s agent submitted copies of the etransfer records of the Tenant’s rent payments, with these being “a better way of showing evidence” as they stated in the hearing. These records show the payments over the prior 12-month period. In the hearing the agent highlighted the months in which the Tenant did not pay rent on the 1<sup>st</sup> of each month:

- partial payments on October 3, 9, and 20, 2020
- partial payments on November 18 and 20, 2020
- partial payments on December 1, 11, 2020
- partial payments on January 5 and 15, 19 2021
- full rent on January 31, 2021 – for Feb 2021
- full rent on March 5, 2021
- full rent on April 1, 2021
- full rent on May 4, 2021
- full rent on June 1, 2021
- full rent on July 3, 2021
- full rent on July 31, 2021 – for August 2021

The Landlord also provided the “Tenant Ledger” from January 2020 to July 2021. This shows the earlier period of the calendar year 2020, with February, July and September also showing as late.

The Tenant prepared a written statement for this hearing, containing the pertinent details:

- the tenancy has run for almost 9 years
- paying rent in 2020 was “a major priority”, and they “honored each months rent”, and “never missed a month”
- the Landlord made the offer in 2020 for “tenants in [their] position” to not pay rent for a period of 3 months; however, they did not take advantage of that offer and made sure the owner received rent each month
- any time late, they made arrangements that the Tenant would pay rent as close to the 1<sup>st</sup> Friday payday – this was “confirmed that it was a non issue as the owners pay was deposited on the 15<sup>th</sup> of each month.”
- when they received the One-Month Notice they contacted accounting and asked how many late payments there were – the response was that “we do not have any and your [sic] in great standing with us”.

In a detail in their written submission, the Tenant noted the following for each month:

- Oct, Nov, Dec 2020 – late “agreed – all paid within each month w/ permission, arrangements made with [the property management firm]
- Jan 2021 – paid Jan 5<sup>th</sup> – 1<sup>st</sup> Friday holiday, paid Monday evening
- March 2021 – paid Mar 5<sup>th</sup>, Friday payday
- May 2021 – paid May 4<sup>th</sup> Monday (May 1<sup>st</sup> was Saturday)
- June 2021 – paid June 1<sup>st</sup> on time
- July 2021 – paid July 3<sup>rd</sup> Saturday, payday Friday

The Tenant presented that 2020 was a difficult year in terms of their employment standing. They were concerned about “rent interruption” and sent an email on March 31, 2020 to the property manager requesting to use etransfers instead of pre-authorized bank withdrawals. The property manager authorized this means of payment. The Tenant described the property manager as “amazing to deal with” during 2020 when the Tenant had to rely on CERB payments due to their employment situation.

The Tenant included an email from the then-property manager dated November 6, 2020 stating: “As long as [rent payment] is before the 15<sup>th</sup> because at that point, the ownership statements go out and I would have to let the owner know.”

The Tenant also provided an email dated November 16, 2020 wherein they told the Landlord about their EI not coming through yet, at that time under review. The Tenant was promising to pay 100% that coming Friday, then paying the full rent for the following month. The then-representative of the Landlord replied: “I just wanted an update, but you are a good tenant and Friday is fine. . . The landlord knows you are a good tenant.”

As stated by the Tenant in the hearing: “We never heard anything at all about this being a problem. We assumed this kind of changed the contract.”

After they received the One-Month Notice, the Tenant panicked and called to the Landlord property management company. A representative in accounting informed the Tenant that they were in good standing. The Tenant was then forwarded to the current property manager. According to the Tenant, this property manager was confused and did not have any knowledge of the One-Month Notice. A message from the property manager dated August 3, 2021 shows their statement: “Unfortunately we didn’t provide the notice to you . . . another company that the owner got involved did.”

The Tenant’s email to the property manager is in their evidence, dated July 29, 2021. In this message the Tenant confirms the discussion they had with the Residential Tenancy Branch who clarified that rent is considered late if received after midnight on the first of the month.

The Landlord’s agent in the hearing clarified that it is the job of the property manager to collect rent, and they would never say to a Tenant “don’t pay your rent.” The property manager who attended verified that the rent ledger was accurate, and there was no carryover of a prior month’s outstanding rent to the following calendar month.

### Analysis

The *Act* s. 47 sets out the reasons for which a landlord may give a One-Month Notice. This includes the reasons indicated on that document served to the Tenant here.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. The Landlord provided evidence on this matter and spoke to the matter in their

submissions. On my evaluation of this evidence and weighing the Landlord's evidence against what the Tenant presented here, I find the One-Month Notice is not valid. In line with this, I cancel the One-Month Notice for the reasons listed below.

The *Act* s. 26 specifies a tenant must pay rent when it is due unless they have a right under the *Act* to deduct all or a portion of the rent. I find the issue here is not one of the Tenant deducting or withholding any portion of the rent; rather, the issue is the Tenant's obligation to pay the rent on the agreed-upon due date.

The agreement specifies that rent is due on the 1<sup>st</sup> of each month. There was no indication that this varied in the years prior to 2020. The Tenant was in difficult financial circumstances and advised the Landlord of this in March 2020. This is shown in the Tenant's March 31 email. I find the Tenant was forthright about advising the Landlord of their changing situation, and I find the property manager, in response, was accommodating to the Tenant.

The Tenant described the situation to say the Landlord was aware of their rent payments being made after each month's first Friday payday as needed. I find the record accurately reflects this, with payments for some of these months delayed. The Tenant fully acknowledged that rent was late with reference to the tenancy agreement. Certainly, they clarified this after they received the One-Month Notice, as shown in the evidence where they advised the Landlord of their conversation with the Residential Tenancy Branch on this singular point.

I find the property management company provided assurance to the Tenant through these months that there were no issues with the tenancy. The evidence of this is the Tenant's own affirmed testimony in the hearing, and there is no evidence of any warnings or other notices conveyed to the Tenant during this time about late rent payments. I find it more likely than not the Landlord was accommodating, though of course this did not equate to the Landlord stating "don't pay your rent."

With the Tenant's acknowledgement, I find that rent payments were late, constituting a breach of s. 26 of the *Act*. I find it unfair to the Tenant that the Landlord would not put them on notice at any time during this ongoing cycle. I give weight to the Tenant's own statement in the hearing that they "assumed this kind of changed the contract". There was no other communication from the Landlord or the property manager during these times that late or staggered rent payments were proving to be problematic. Further, the message to the Tenant on November 6, 2020 stated "As long as [rent payment] is before the 15<sup>th</sup> . . ." I find the Tenant had a right to rely on this message at that point,

and even though that month and January 2021 had payments *past* the 15<sup>th</sup>, again there was no word of notice or warning from the Landlord or property manager on this. Indeed, by November 16, 2020, the message of assurance from the property manager was “You are a good tenant and Friday [i.e., November 20 – after the 15<sup>th</sup>] is fine. The Landlord also knows you are a good tenant.” There was no other correspondence concerning late payment of rent prior to the Landlord’s agent issuing the One-Month Notice on July 23, 2021.

I note the Tenant’s own evidence contains a record of their own discussion with the Residential Tenancy Branch on the meaning of late rent: “anything received after midnite on the first of the month is considered late.” I find the Tenant is now aware of the tenets of the *Act*, as reflected in their own ongoing tenancy agreement. While this constitutes grounds for a Landlord issuing a notice to end tenancy, in this hearing I acceded to the Tenant’s chief point about the communication they had from the property manager, and the ongoing acceptance of late/partial payments. Additionally, I note there was no issuance of a 10-Day Notice for Unpaid Rent, nor was there an imposition of the \$25 fee as specified in the agreement for overdue rent.

For the reasons above I grant the Tenant’s Application for a cancellation of the One-Month Notice. I dismiss the Landlord’s Application for an order of possession, without leave to reapply.

As the tenant was successful in this application, I find they are entitled to recover the \$100 filing fee paid for this Application. I authorize the tenant to withhold the amount of \$100 from one future rent payment.

Because they are not successful in this hearing, the landlord is not entitled to compensation for the cross-Application filing fee.

### Conclusion

For the reasons outlined above, I order the One-Month Notice issued on July 23, 2021 is cancelled and the tenancy remains in full force and effect.

I dismiss the landlord’s cross-Application for an Order of Possession, without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 10, 2021

---

Residential Tenancy Branch