



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      OPC, OPR, OPL, OPL-4M, FFL/ CNC PSF

### **Introduction**

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for non-payment of rent, for cause, and for landlord’s use of the property pursuant to section 55 of the Act; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- the cancellation of the One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47; and
- an order that the landlord provide services or facilities required by law pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:27 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord and I were the only ones who had called into the hearing.

### **Preliminary Issue - Service of Documents and Effect of Tenant’s Non-Attendance**

The landlord testified that the tenant served him with her notice for dispute resolution proceeding package and documentary evidence. However, he testified that he did not serve the tenant with a copy of his notice for dispute resolution proceeding package or documentary evidence. He testified that he did not think it was necessary as the tenant had served him with a copy of her application materials.

Residential Tenancy Branch (the “**RTB**”) Rule of Procedure 3.1 requires an applicant to serve a respondent with the notice of dispute resolution proceeding package and documentary evidence within three days of receiving the package from the RTB. The landlord failed to serve the required documents within the allotted time frame, or at all.

As such, I find that the tenant does not have notice of the landlord's application to end the tenancy on the basis of unpaid rent or for landlord's use of the property, or of his application to recover his filing fee. I dismiss these portions of the landlord's application with leave to reapply. Similarly, as the tenant has not received copies of the landlord's documentary evidence (with the exception of the Notice, the service of which I will discuss below), she does not have notice as to their contents. I exclude all the landlord's documentary evidence, except for the Notice, from the evidentiary record.

However, despite not being served with the landlord's application for an order of possession for cause, I find the tenant does know that an application to end the tenancy on that basis is occurring, given that her own application deals with the same subject matter and given that she served the landlord with her application materials.

In substance, there is no difference between a landlord's application to end a tenancy for cause and a tenant's application to cancel a notice to end tenancy for cause.

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, in the tenant's application, the landlord bears the evidentiary burden to prove that the Notice is valid, just as he bears the burden of proof in his own application to end the tenancy for cause.

Accordingly, I decline to dismiss the landlord's application to end the tenancy for cause. Additionally, as the landlord has been served with the tenant's application, and as he bears the onus to prove that the Notice is valid, I will not dismiss the tenant's application to cancel the Notice due to her non-attendance.

However, the tenant bears the evidentiary burden to prove the facts necessary for an order that the landlord provide services or facilities required by law. Per Rule 7.4, a party must present their evidence at a hearing in order for it to be considered. The tenant has not attended, so I decline to consider any of the documentary evidence she submitted to the RTB in advance of the hearing. Accordingly, I find that she has failed to discharge her evidentiary burden to prove she is entitled to an order that the landlord

provide her with services or facilities and I dismiss this portion of her application without leave to reapply.

### **Issues to be Decided**

Is the landlord entitled to an order of possession?

Is the tenant entitled to an order cancelling the Notice?

### **Background and Evidence**

While I have considered the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of his claims and my findings are set out below.

The rental unit is a ground-level suite in a single-detached house (the “**house**”). The landlord and his family live on the upper floor. The landlord testified that he purchased the home in 2010, and that the tenant was already living in the rental unit. He testified that the parties entered into a written tenancy agreement on June 1, 2016, as the parties could not locate a copy of the previous written tenancy agreement. Monthly rent is \$850 and is due on the first of each month. The tenant paid the prior owner of the house a security deposit of \$375, which was transferred to the landlord when he purchased the house and which the landlord now holds in trust for the tenant.

The landlord testified that he gave the tenant a written letter purporting to end the tenancy for cause on September 13, 2021. However, he testified that he later learned that in order to give notice of ending a tenancy for cause, he would have to use a particular RTB form. On October 6, 2021, he testified he personally served the tenant with the Notice (form #RTB-33). Despite being served on October 6, 2021, the Notice was dated September 13, 2021. It specified an effective date of November 6, 2021.

The Notice listed the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent;
- Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has not done required repairs of damage to the unit;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit; and
- Security or pet damage deposit is not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant failed to pay rent on time (or in full) for the months of April to August 2021 (inclusive). He testified that she only paid \$500 in rent for these months. He testified that he never agreed to reduce the rent for these months but did not issue any notices to end tenancy for non-payment of rent because he wanted to try

to work the dispute out with the tenant, rather than resort to a formal dispute resolution proceeding.

The landlord testified that after repeated demands for payment of rent on time and in full, the tenant resumed paying the full amount of rent on time starting September 1, 2021. She has paid rent on time and in full in each subsequent month but has not paid any of the arrears for April to August 2021.

For the reasons that follow, it was not necessary for me to hear submissions on the balance of the reasons why the landlord issued the Notice.

### **Analysis**

Section 26(1) of the Act states:

#### **Rules about payment and non-payment of rent**

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's testimony that monthly rent is \$850 and that the tenant only paid \$500 of the rent due for each of April, May, June, July, and August 2021. I accept his undisputed testimony that he did not consent to reducing the amount of rent due. I find that the resumption of the tenant paying the full amount of rent in September 2021 indicates that the landlord did not agree that rent could be reduced and supports his testimony that he demanded that the tenant pay the full amount of rent owed. I find that the underpaying of rent for April to August 2021 amount to the tenant being late in paying the rent for those months.

Section 47(1)(b) states:

#### **Landlord's notice: cause**

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(b) the tenant is repeatedly late paying rent;

RTB Policy Guideline 38 states:

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.

The tenant was late paying rent for five consecutive months. She has still failed to pay the rent that is due. Five instances of late payment of rent are sufficient to justify ending a tenancy for late payment. The landlord first attempted to end the tenancy for late payment (among other things) on September 13, 2021 and issued the Notice on October 6, 2021. The landlord acted in a timely manner in so doing. I have reviewed the Notice and find that it complies with the form and content requirements of section 52 of the Act, and that section 53 of the Act automatically changes the incorrect effective date from November 6, 2021 to November 30, 2021.

I find that the landlord has proven it is more likely than not that the tenant has repeatedly paid rent late and that he is entitled to an order of possession. It is not therefore necessary for the landlord to prove that the other grounds listed on the Notice.

At the hearing, the landlord stated that he would like the order of possession effective at the end of February 2022, so as to give the tenant sufficient time to relocate. I grant this request.

### **Conclusion**

I dismiss the tenant’s application to cancel the Notice, without leave to reapply.

I grant the landlord’s application to end the tenancy for cause.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by February 28, 2022 at 1:00 pm.

I order the landlord to serve the tenant with a copy of this decision and attached order as soon as possible upon receiving it from the RTB.

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: January 12, 2022

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Residential Tenancy Branch