



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord make repairs to the rental unit or property; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The Rules of Procedure specify that multiple applications contained in a single application must be related, and I found that the request for an order for repairs is not related to the primary application, which is an application to cancel a notice to end the tenancy. The tenant's application for an order that the landlord make repairs to the rental unit is dismissed with leave to reapply.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

LANDLORD'S TESTIMONY:

**The landlord's agent** testified that this month-to-month tenancy began on November 15, 2020 and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 was payable on the 1<sup>st</sup> day of each month, which was increased by \$18.00 per month effective January 1, 2022. There are no rental arrears except for the increased amount for the months of January and February, 2022; the tenant has not paid the increase for those months and is now currently in arrears the sum of \$36.00.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and the landlord's agent does not reside on the rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord served the tenant by email with a One Month Notice to End Tenancy for Cause on October 9, 2021, and a copy has been provided for this hearing. The date it was signed is not readable, however the landlord's agent testified that it was signed and dated October 7, 2021. The effective date of vacancy is November 30, 2021, and the reason for issuing it states: Tenant is repeatedly late paying rent.

The landlord has provided copies of notices to end the tenancy for unpaid rent or utilities, and the landlord's agent testified that rent for July, 2021 was paid on the 15<sup>th</sup> of the month; rent for August, 2021 was paid on the 6<sup>th</sup> of the month; and October's rent was also paid on the 6<sup>th</sup> day of the month.

The landlord does not believe the tenant has grounds to dispute the Notice, but filed to get more time.

TENANT'S TESTIMONY:

**The tenant** testified that the late payments weren't sequential and that rent for September, 2021 was paid on time. Through communication by email the tenant notified the landlord that rent would be late and doesn't think it affected the landlord. He often picks up rent late.

The tenant pays rent in cash and leaves it in a post box that has a small slot at the end of a corridor. Sometimes the landlord's agent or a colleague picks it up after the 6<sup>th</sup>, 7<sup>th</sup> or on Sundays. On one occasion the landlord's agent asked the tenant to take the rent to his house but the tenant declined that. It's difficult to communicate with the landlord's agent.

**SUBMISSIONS OF THE LANDLORD'S AGENT:**

Rent is always collected on the 1<sup>st</sup> day of each month. Emails provided for this hearing show that the tenant would be late. A late payment is a late payment. If the Notice is upheld, the landlord does not oppose an effective date of vacancy of March 31, 2022.

**SUBMISSIONS OF THE TENANT:**

None.

Analysis

I refer to Residential Tenancy Policy Guideline 38 – Repeated Late Payment of Rent, which states:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

In this case, I find that the landlord has proven a minimum of 3 late payments of rent, which is not disputed by the tenant. The tenant's position is that the 3 late payments were not sequential, however only 1 payment was made on time between July and October, 2021. The landlord served the One Month Notice to End Tenancy for Cause on October 9, 2021, and therefore I am satisfied that the landlord acted in a timely manner.

The tenant has not provided any evidence of a bank error or any such issues that caused the tenant to be late, other than working in another location, but I don't see that as being a reason to pay rent late.

The tenant also testified that the landlord has not been inconvenienced by the late payments, but that is not a relevant factor. I find that the landlord had cause to issue the Notice, and I dismiss the tenant's application to cancel it.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end the tenancy I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*, and I find that the landlord is entitled to an Order of Possession.

The landlord's agent submitted that the landlord would be content with an effective date of vacancy of March 31, 2022, and I so order.

### Conclusion

For the reasons set out above, the tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed with leave to reapply.

The tenant's application for an order cancelling a One Month Notice to End Tenancy for Cause is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on March 31, 2022.

This order is final and binding and may be enforced.

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: February 26, 2022

---

Residential Tenancy Branch