



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on December 28, 2021, and to have the landlord comply with the Act.

Only the landlord appeared. I note the tenant contact the Residential Tenancy Branch on March 30, 2022, asking to reschedule the matter due to health problems. The tenant was instructed to call into the hearing to ask for an adjournment. The tenant did not call into the hearing or arrange to have someone attend on their behalf. The hearing proceeded in their absence.

The landlord indicated that on March 29, 2022, they were at another hearing that had four combined applications for dispute resolution, one of which was their application for an order of possession based on the Notice. The landlord provided me with the file number, which I have noted on the covering page of this decision.

I have reviewed the interim decision and the landlord’s application was severed to be heard at a later date as it was unrelated to the tenant’s application to cancel a notice to end tenancy for unpaid rent.

The landlord states that their application should be joined with the tenant’s application as the landlord would be entitled to an order of possession pursuant to section 55 of the Act if the tenant’s application is dismissed.

In this case, I find it reasonable that the landlord’s application be joined with the tenant’s application as they are directly related. I do not find this prejudicial to the tenant because if their application to cancel the Notice is dismissed then landlord would be

entitled to receive an order of possession even if they had not made their own application as there was no requirement for the landlord to make a separate application for an order of possession as I must consider section 55 of the Act.

### Issues to be Decided

Should the Notice be cancelled?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy began on April 2, 2021. Rent in the amount of \$1,525.00 was payable on the first of each month. The tenant paid a security deposit of \$762.50.

The tenant acknowledged that they were served with the Notice on December 29, 2021, in their application.

The tenant submits the following details

“Landlord has refused rent in arrears as well as ongoing rent and support from outside third-party organizations. Landlord has been harassing tenant by taking photos of tenants balcony, and falsely stating other tenants have issued complaints in regards to smoking. Tenant was also not in the unit on the day that landlord accused tenant of smoking, nor has she smoked inside or on balcony of the alleged days”.

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

- Tenant is repeatedly late paying rent;
- significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Breach a material term of the tenancy agreement.

The landlord testifies that the tenant is repeatedly late paying rent . The landlord stated rent has been paid as follows:

- April 2021 rent was returned due to insufficient funds, and they received a partial payment of \$700.00 on April 28, 2021;
- May 2021 rent they received \$600 on May 3<sup>rd</sup> and an etransfer of \$3,050.00 on May 12, 2021, satisfying the rent arrears;

- June 2021 rent they received \$600 on June 15, 2021, leaving arrears owing;
- July 2021 rent they receive \$600.00 on July 12, \$200.00 cash on July 13, 2021, increasing the rent arrears;
- August 2021 rent was not paid
- September rent they received \$600.00; and
- No rent has been received for October, November, December 2021, January, February and March 2022.

The landlord stated that the tenant is currently in rent arrears, including late fees totalling the amount of \$10,600.00.

The tenant submitted into evidence a to whom it may concern, letter dated October 21, 2021. It is from a third-party organization who has indicated that they sent a cheque to the landlord, and it was never cashed. I find I can put no weight on this letter as it does not have sufficient detail as when the cheque sent, how much was the cheque for, and what reasons did they cancel the cheque, as an example was it lost.

### 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. A copy of the Notice was filed in evidence and meets the requirements of section 52 of the Act.

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:

- Tenant is repeatedly late paying rent;

Under the Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justice a notice under this provision of the Act.

I accept the landlord's evidence that the tenant has been late paying rent since the tenancy has started. This far exceeds the minimum number sufficient to end the

tenancy. Further, that tenant has not paid any rent since September 2021, and is in significant rent arrears.

I find the Notice, has been proven by the landlord and is valid and enforceable. I find the tenancy legally ended on January 31, 2022, and the tenant is overhold the premises.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

Based on the above, I find I must dismiss the tenant's application without leave to reapply.

As I had found the tenancy ended on repeated late payments of rent, I did not need to consider the balance of reasons in the Notice.

As the landlord's application was filed after the tenant's application and as I said previously in this Decision that there was no requirement for the landlord to make this application as I must under section 55 grant the landlord an order of possession if I dismiss the tenant's application. I do not award the landlord the cost of the filing fee.

### Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: March 31, 2022

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Residential Tenancy Branch