



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, DRI, OLC, LRE, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 28, 2022, to dispute a rent increase that is above the amount allowed by law, I want the landlord to comply with the Act, regulation and/or the tenancy agreement, to suspend or set conditions on the landlord's right to enter the rental unit or site and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice and the tenant's application to recover the filing fee at these proceedings. The balance of the tenant's application is dismissed, with leave to re-apply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence

submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on March 20, 2017. The rent at the start of the tenancy was \$1,600.00 and payable on the 1<sup>st</sup> day of each month. The tenant paid a security deposit of \$800.00. No utilities are included in the rent. Rent is currently \$1,800.00, plus one \$100.00 towards utilities that are not in the tenant's name.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on February 28, 2022.

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

- The tenant is repeatedly late paying rent;
- The tenant has allowed an unreasonable number of occupants in the unit; and
- The tenant has assigned or sublet the rental unit.

Both parties have provided a copy of the history of rent payments, which show the following payments prior to the Notice being issued: I have only noted the late payments as that is the issue before me that have accrued over the prior last 12 months.

- January 2022, rent was paid in two payments made on January 2<sup>nd</sup> and 4<sup>th</sup>;
- August 2021, rent was paid on August 2;
- July 2021, rent was paid in two payments on the July 2<sup>nd</sup> and 8<sup>th</sup>;
- May 2021, rent was paid in two payments on May 1, and 4<sup>th</sup>;
- April 2021, rent was paid in two payments on April 1<sup>st</sup> and 3<sup>rd</sup>;
- March 2021, rent was paid in two payments on March 2<sup>nd</sup> and 5<sup>th</sup>

The landlord testified that the tenant is repeatedly paying rent late and they have warned the tenant that paying rent late is not acceptable.

The tenant testified that they do not deny the late payment of rent. The tenant stated they have done their best to pay rent during the pandemic. The tenant stated that it has not been an easy economic under the circumstances.

### 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.

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:

- The tenant is repeatedly late paying rent.

Under the Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent states the following.

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.

[Reproduced as written]

In this case, the tenant has been late paying rent six (6) times within a one-year period prior to the Notice being issued, while there was a four-month period where the tenant

did pay their rent on time; however, I don't find that is far enough apart and must be considered. I find the tenant has been repeatedly late paying rent. I find the Notice has been proven for repeated late payments of rent by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice..

I have not considered the other reasons stated in the Notice as I have found the tenancy has ended due to late payments of rent.

As the landlord has accepted occupancy rent for the month of May 2022, I find it appropriate to extend the effective vacancy date in the Notice to **May 31, 2022**, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **May 31, 2022, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlords.

#### .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: May 06, 2022

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Residential Tenancy Branch