



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** CNC FFT

### Introduction

This hearing dealt with the tenants' application pursuant to to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

The tenants attended with their legal counsel, AM. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlords duly served with the tenants' Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

The tenants acknowledged receipt of the 1 Month Notice to End Tenancy for Cause dated September 14, 2022, with an effective date of October 31, 2022 (the 1 Month

Notice) on September 15, 2022. Accordingly, I find that the 1 Month Notice was duly in accordance with section 88 of the *Act*.

**Preliminary Matter: Does the Residential Tenancy Act have jurisdiction to hear the dispute between the parties?**

Although both parties agreed that they had entered into a Rent to Own agreement in 2015, both parties agreed that the relationship between the parties is still a tenant and landlord relationship. Both parties confirmed that although \$34,500.00 has been paid towards the purchase price, the purchase of the property had not been completed as of the hearing date. The tenants still currently pay the landlords \$1,500.00 per month to rent the home. I therefore accept jurisdiction as this dispute falls under the *Residential Tenancy Act*.

**Issue(s) to be Decided**

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlords?

**Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2015 as a rent-to-own contract. The agreement was for the tenants to pay the landlords \$1,500.00 in monthly rent on the first of every month until the home was purchased on August 1, 2016. The tenants paid a \$20,000.00 deposit towards the purchase of the property at the beginning, and were to pay an additional \$500.00 per month towards the purchase price. The tenants did not purchase the property on August 1, 2016, and continue to pay monthly rent to the landlords in the amount of \$1,500.00 per month.

The landlords served the tenants with a 1 Month Notice on September 15, 2022 on the following grounds:

1. The tenant is repeatedly late paying rent.

The landlords argue that the tenants have been repeatedly late in paying their rent on at least three occasions, including the December 2021, January 2022, April 2022, and August 2022 rent payments. The landlords testified that rent is due on the first of the month, and that they had never given the tenants permission to pay their rent late. The landlords testified that the tenants continue to pay rent late, including for the month of November 2022, and on each occasion, the tenants failed to properly communicate or make arrangements with the landlords in regards to the late rent payments.

The tenants do not dispute that they have been late paying their rent during this tenancy, which includes the referenced late rent payments, but argued that the landlords have no right to end this tenancy on the grounds of late rent payments as the landlords have always accepted the late rent payments, and have never served them with any 10 Day Notices for Unpaid Rent, nor any written notices or warnings that the late rent payments were not acceptable, and that these late rent payments could possibly result in a Notice to End Tenancy.

The tenants argued that the first time that the landlords had expressed concern over the late rent payments was on through a text message on April 8, 2022. The tenants argued that prior to April 2022, they were under the impression that the landlords did not have an issue with the late rent payments, and especially not to an extent that the late rent payments would result in a Notice to End Tenancy. The tenants submitted confirmations of electronic payments sent to the landlords dating back to May 2021 where payments were often sent on the first of the month, but often not posted until a few days later. The tenant's legal counsel argued that since April 2022, the tenants only had one issue in August 2022 where a banking error over a long weekend prevented the tenants from being able to send the entire rent on August 1, 2022. Counsel argued that the tenants took immediate steps to remedy the issue by attending at the bank on August 2, 2022 to ensure that the rest was paid.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlords have the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

The tenants do not dispute that they were repeatedly late in making their rent payments, which is normally due on the first of the month, but testified that the landlords never made it clear that it was an issue, especially to the extent that the late payments would

result in the end of the tenancy. The tenants submitted a copy of a text message sent by the landlord on April 8, 2022 containing the following message: *"Hi. Did you get your money situation corrected. Please pay before Monday. Or we will have to go in a different direction with the place."*

The landlords dispute ever giving the tenants permission to make late rent payments. The landlords argued that the tenants knew rent payments were due on the first of the month, and they have been late on at least three occasions prior to the issuance of the 1 Month Notice to End Tenancy for Cause.

I have reviewed the evidence and testimony before me, and I find that despite the fact that rent is due on the first of the month, there is a history of repeated late rent payments by the tenants. In review of the recent records submitted by the tenants from May 2021 to September 2022, I find that the tenants would often send their rent to the landlords by way of electronic transfer on the first of the month, and the payments would not post until a day or two later. There were also multiple occasions where the tenants did not send payment until after the first of the month, including the July 2021, December 2021, January 2022, March 2022, and April 2022 payments.

Despite the repeatedly late rent payments, the landlords have not served the tenants with any written warnings about the repeated late rent payments, nor any Notices to End Tenancy until the 1 Month Notice on September 15, 2022. The landlords did send a text message to the tenants on April 8, 2022, which expresses displeasure with the late rent payment, but does not clearly state how late rent payments would no longer be tolerated. I find the statement "Or we will have to go in a different direction with the place" to be vague, and does not clearly define what "a different direction" means. After the April 8, 2022, the tenants were late on at least one further occasion in August 2022 before the landlords served the tenants with the 1 Month Notice.

I find that the legal principle of estoppel applies in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

As shown by the evidence and testimony before me, the landlords have established a pattern of accepting frequent late rent payments from the tenants during this tenancy. As the landlords noted in the hearing, the tenants should know and expect that electronic payments and banking issues often affect when the payments would be

received by the landlords. Despite this issue, the tenants often made payments that were not posted until the second to the third day of the month, which the landlords accepted. In addition to the late rent payments due to alleged banking issues, the tenants were clearly late with their December 2021, January 2022, and April 2022 rent payments by more than five days.

I am satisfied that the tenants have established that they have often sent their rent payments after the first of the month, which were accepted by the landlords without consequence or any indication that this was not acceptable. I find that no prior warning letters or Notices to End Tenancy had been served to the tenants prior to the 1 Month Notice served on September 15, 2022. I find the April 8, 2022 text message to be vague, and did not clearly communicate to the tenants that the landlords were no longer going to accept any further late rent payments, and that they were now going to strictly enforce the requirement that monthly rent be paid in full and by the first of the month. In the absence of proper written notice to the tenants informing them that late rent payments were no longer acceptable, and based on the legal doctrine of estoppel, I find that the landlords have not met the burden of proof to support that they had grounds to end the tenancy for repeated late rent payments as noted on the 1 Month Notice, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice dated September 14, 2022. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

I allow the tenants to recover the filing fee for this application. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

### **Conclusion**

I allow the tenants' application to cancel the 1 Month Notice dated September 14, 2022. The 1 Month Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application. I allow the tenants to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlords must be served with **this Order** as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 14, 2022

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Residential Tenancy Branch