



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC, OLC

### **Introduction**

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

- the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution package. The tenant did not serve the landlord with his evidence package. This is a requirement under the Residential Tenancy Branch (the "**RTB**") Rules of Procedure. As such, I did not consider the tenant's documentary evidence at the hearing.

The landlord testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice; and
- 2) an order that the landlord comply with the Act?

If not, is the landlord entitled to an order of possession?

### **Background and Evidence**

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

The landlord is an agent for the owner of the building. He was unable to provide me with this individual's name, as it was in a foreign language. He simply referred to the owner as "Frank".

The rental unit is an apartment in a multi-apartment building. The tenant and the prior owner of the building entered into a tenancy agreement starting June or July 2019. The prior owner subsequently sold the building to the current owner (Frank). The landlord was the building manager for the prior owner and is currently the building manager for the current owner.

In any event, monthly rent is \$990 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$490, which the landlord continues to hold in trust for the tenant.

The landlord testified that the tenant has been habitually late paying rent throughout the tenancy. He testified that the tenant was late paying rent in April July, August, October, November, December 2020, January, February, March, May, August, September, November, December, 2021, and January and February 2022. The landlord issued three notices to end tenancy for non-payment of rent during this time, the most recent of which was in February 2022. None of these notices led to the end of the tenancy.

The tenant agreed that he paid rent late as indicated by the landlord.

The landlord also testified that he had received numerous noise complaints about the tenant throughout the tenancy, including complaints on February 17, March 27, April 1, April 9, and June 9, 2022. He testified that police attended the rental unit on March 27 and June 6, 2022 and that on both occasions ambulances had to come to take away guests of the tenant.

The tenant denied he caused any noise disturbances. He testified that his neighbours never complained to him about the noise and the he never received any warnings about noise complaints. He denied that any one overdosed in his rental unit or that anyone had to be removed by ambulance.

On July 1, 2022, the landlord served the tenant with the Notice. It listed an effective date of July 31, 2022 and listed the reasons for ending the tenancy as:

- 1) tenant is repeatedly late paying rent;
- 2) tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 3) tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- 4) tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or landlord.

The tenant confirmed receiving the Notice and disputed it on July 7, 2022.

### **Analysis**

Section 47(1) of the Act, in part, 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;

[...]

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

[...]

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

[...]

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

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 landlord testified that the tenant paid rent late 16 times during the tenancy. The tenant agreed. As such, I find that he was late paying rent at least three times.

The landlord issued the Notice four months after the most recent late payment. Given the number of times the tenant was late paying rent during the tenancy and as the landlord issued a 10-day notice to end tenancy for non-payment of rent in February 2022, I do not find it appropriate to conclude that the landlord has waived reliance on the late payment of rent provision of the Act.

Accordingly, I find that the Notice was issued for a valid reason. It is therefore not necessary for me to determine if the other reasons for ending the tenancy listed on it are true. Only one of the reasons needs to be true in order for an order of possession to be issued.

I have reviewed the Notice and find that it meets with the form and content requirements of section 52 of the Act. The Notice is therefore valid, and I dismiss the tenant's application to cancel it.

Section 55(1) of the Act states that if an application to cancel a notice of end tenancy is dismissed, an arbitrator must issue an order of possession.

In light of the fact the tenant is not in arrears, I find it appropriate to make the order of possession effective December 31, 2022 at 1:00 pm.

As I have ordered the tenancy to end, it is not necessary for me to address the tenant's application for an order that the landlord comply with the Act.

### **Conclusion**

I dismiss the tenant's application without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by December 31, 2022 at 1:00 pm.

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: December 8, 2022

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Residential Tenancy Branch