



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

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## DECISION

Dispute Codes      CNC FFT

### Introduction

The tenant seeks an order cancelling a *One Month Notice to End Tenancy for Cause* (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). They also seek to recover the cost of the filing fee pursuant to section 72 of the Act.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. However, only the evidence necessary to determine the issues of this dispute is reproduced below.

The tenancy began April 1, 2016 and rent is currently \$1,140.00. Rent is due on the first day of the month. These facts are supported by a written tenancy agreement which is in evidence and which is not disputed by the parties.

The landlord testified under oath that the Notice was served upon the tenant on or about October 18, 2022. As indicated on page two of the Notice, and as described by the landlord, the Notice was issued because the tenant has been repeatedly late paying rent. According to the landlord, and substantiated by a rent payment ledger, the tenant was late paying rent on November 4, 2021, November 6, 2021, November 10, 2021, August 2, 2022, and again on October 3, 2022.

While the tenant did not dispute that rent was late, he argued that he has experienced significant issues in cashing his employment cheques in a timely manner. The landlord has, since some of the rent cheques were returned NSF, requested that rent be paid by bank draft or money order.

The tenant testified under oath that he is trying to work within his financial means, but he just cannot get ahead of the rent payment due dates. He further testified that he has to physically attend to a bank in order to convert his work cheques into bank drafts. This limits his ability to make the rent on time. Last, he has no problem with paying rent on time, but that his current financial situation is not helping.

### Analysis

The notice to end the tenancy was issued under subsection 47(1)(b) of the Act because “the tenant is repeatedly late paying rent.”

Where a tenant disputes a notice to end a tenancy the landlord bears the onus of proving, on a balance of probabilities, the grounds or reason for the notice to end the tenancy being given.

In this dispute, the oral and documentary evidence persuades me on a balance of probabilities that the landlord gave the Notice for valid reason: that the tenant was repeatedly late paying rent. He was late a total of three times: November 2021, August 2022, and October 2022. (The three attempted rent payments made in November 2021 cannot, I must conclude, be considered three late payments; rather, the tenant was late paying the rent once in November.)

While it is not lost on me that the tenant has been through a difficult year, most notably his parents’ memorial, issues concerning difficulties with his bank account, obtaining properly dated bank drafts, and so forth, do not give rise to a legal justification for paying rent late. Section 26 of the Act is clear in that a tenant must pay rent when it is due under the tenancy agreement. There is nothing before me to find that the tenant had a right under the Act not to pay the rent on the first day of the month. It is solely the responsibility of a tenant to pay rent on time, regardless of what difficulties they may have with their bank or with the method of payment by which rent is paid.

Having reviewed the Notice it is my finding that the Notice complies with section 52 of the Act in form and content.

Given these findings the tenant's application for an order cancelling the Notice must be dismissed, along with the claim to recover the cost of the application filing fee.

Pursuant to section 55(1) of the Act, having dismissed the tenant's application and having upheld the Notice, the landlord is hereby granted an order of possession.

A copy of the order of possession is issued with this decision to the landlord. The landlord is ordered to serve a copy of the order of possession upon the tenant within two (2) days of receiving it from the Residential Tenancy Branch. As noted in the order of possession the tenant must vacate the rental unit no later than February 28, 2023.

### Conclusion

The application is dismissed without leave to reapply.

The landlord is granted an order of possession effective February 28, 2023.

This decision and the order of possession are made and issued on authority delegated by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 24, 2023

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Residential Tenancy Branch