



# Dispute Resolution Services

Page: 1

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:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord was represented by their agent, GC, in this hearing. 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 confirmed that they understood.

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

The tenant acknowledged receipt of the 1 Month Notice to End Tenancy for Cause dated July 31, 2022. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

**Issue(s) to be Decided**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to comply with the Act?

**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 this application and my findings around it are set out below.

This month-to-month tenancy began on January 1, 2015, with monthly rent currently set at \$710.50, payable on the first of the month. The landlord still holds a security and pet damage deposit of \$325.00 each deposit.

The landlord served the tenant with the 1 Month Notice dated July 31, 2022 providing the following grounds:

1. The tenant is repeatedly late paying rent.
2. Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment, and the employment has ended.

The landlord confirmed that the second ground was selected in error, and that they wished to end this tenancy on the grounds of repeated late rent payments.

The landlord submitted a copy of a 10 Day Notice for Unpaid Rent dated April 9, 2022 for the tenant's failure to pay \$2,100.00 in unpaid rent by April 1, 2022. Both parties confirmed that the tenant paid the outstanding amount on April 15, 2022, and the landlord allowed the tenancy to continue. The landlord served the tenant with the 1 Month Notice dated July 31, 2022 for repeatedly paying their rent. The landlord testified that in addition to the overdue rent that was paid on April 15, 2022, the tenant was late paying their July 2022 rent, which was paid on July 2, 2022. The landlord submitted in evidence a summary of payments made between June 1, 2021 and December 1, 2022. The landlord's agent noted that that payment dates on the document were incorrect, and referred to the tenant's own evidence to show which date payments were made towards the monthly rent.

The landlord argued that after the 1 Month Notice was served, the tenant was late paying their August 2022 rent, and argued that the tenant was late paying their rent on at least three occasions in the past year.

The tenant admits that they were late paying the July 2022 rent as they were unaware that the online payment would be delayed due to the long weekend. The tenant also admits that there was a 10 Day Notice issued in April 2022, but that the landlord had settled the matter with the tenant by accepting the outstanding rent, and allowed the tenancy to continue. The tenant testified that they were unsure of whether August 2022 was still due as the landlord had served them with the 1 Month Notice.

### **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 tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that he has cause to end the tenancy on the grounds provided on the 1 Month Notice, which in this case is for repeated late rent payments.

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*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 tenant argued that the threshold had not been met at the time they were served with the 1 Month Notice.

I have considered the evidence submitted as well as the sworn testimony of both parties. I note that the landlord confirmed in the hearing that the document containing the payment summary submitted by the landlord in their evidence is inaccurate as the payment dates are not correct. The landlord referred to the bank statements submitted

by the tenant, which show a late payment on April 15, 2022 as well as July 2, 2022. The landlord also notes that the August rent was paid on August 29, 2022.

For the purposes of this application, I note that the landlord must have had sufficient grounds on the date that the date of the 1 Month Notice, which in this case was July 31, 2022. Any late rent paid after this date would not be relevant to this application, and is therefore not considered. I am satisfied that the evidence clearly shows two late rent payments of April 15, 2022 and July 2, 2022. In consideration of whether any other late payments would apply, I note that the onus is on the landlord to demonstrate that the minimum number of late rent payments have been met to justify a notice under this provision.

I find that the landlord's evidence falls short. Not only did the landlord fail to provide an accurate and detailed log of the past late rent payments, I find that the evidence shows that some agreement was made in April 2022 which allowed the continuance of the tenancy after the service of the 10 Day Notice. The landlord accepted the \$2,100.00 lump sum payment on April 15, 2022, and the tenancy was allowed to continue. The landlord did not submit any copies of any further 10 Day Notices to End Tenancy or written warnings issued after that date. Although no written agreement was submitted, I find that the acceptance of the lump sum payment on April 15, 2022 and the continuance of the tenancy implied that the landlord had forgiven the tenant for any prior late rent payments before this date, and that the matter was indeed settled. A warning to a tenant must be unambiguous and clear. For this reason, I am not satisfied that any prior late rent payments before April 2022 should be included for the purposes of justifying this 1 Month Notice.

I find that the landlord has not sufficiently established that this tenancy should end on the grounds of repeated late rent payments. I allow the tenant's application to cancel the 1 Month Notice dated July 31, 2022, and this tenancy is to continue until ended in accordance with the *Act*.

Although the tenant filed an application for the landlord to comply with the *Act*, I am not satisfied that any further orders are required at this time. I dismiss this portion of the application with leave to reapply.

### **Conclusion**

The landlord's 1 Month Notice to End the Tenancy dated July 31, 2022 is cancelled and is of no continuing force or effect. The tenancy is to continue until ended in accordance with the *Act*.

I dismiss the tenant's application for the landlord to comply with the tenancy agreement and Act with leave to reapply.

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: January 05, 2023

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Residential Tenancy Branch