



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### **Preliminary Matter**

The Landlord states that they did not receive the Tenant’s evidence. The Tenant states that the evidence was provided to the Landlord with their application and by email again on September 17, 2022. It is noted that the evidence of the Tenant consists of a copy of the notice to end tenancy, a reference to a policy guideline, a copy of the unit listing for sale and a brief statement by the Tenant of the relevance of the policy. As the only evidence that the Landlord would not have had in its possession or knowledge of would be the Tenant’s statement referring to the policy. Accepting that the Landlord does not have this written statement, I decline to consider the written statement, however the Tenant has full opportunity to make statements in their testimony of the relevance of the policy to the dispute.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid for its stated reason?

### Background and Evidence

The following are agreed facts: the tenancy under written agreement started on April 30, 2013. Rent of \$840.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. On August 25, 2022 the Landlord served the Tenant with a one month notice to end tenancy for cause dated August 25, 2022 (the "Notice"). The reason stated on the Notice is that the Tenant has been repeatedly late paying rent. The Notice contains details of late rent payments made August 4, 2022, June 3, 2022 and May 6, 2022.

The Landlord states that although the Tenant has paid rent late multiple times during the tenancy the Landlord has tried to be cordial and has sent reminders asking about the rent payments. The Landlord states that they relied on the terms of the tenancy and the three most recent late payments to issue the Notice. The Landlord confirms that the Tenant was never told that late rent payments would not be tolerated.

The Tenant states that the Landlord never said anything to the Tenant about repeat late rent payments or ending the tenancy other than reminding the Tenant of the late payments and that the Landlord only raised the issue when the Landlord listed the unit for sale in August 2022. The Landlord states that the unit has not yet sold.

### Analysis

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Policy Guideline #38 provides that 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. Further, the doctrine of laches operates to stop a party from relying on a remedy for a breach of a term where there a party neglects to assert their right to the remedy for that breach for an unreasonable length of time and with other circumstances that would prejudice the other party. If the Landlord were to end the tenancy once the unit was sold the Act provides that the Tenant would receive the equivalent of one

month's rent in compensation. A mere reminder of rents not being paid on time over the course of a 10-year tenancy is not evidence of acting in a timely manner. Further there is no evidence that the Landlord previously served the Tenant with any notice to end tenancy because of late or unpaid rent. Given the undisputed evidence of several late rent payments over a nearly 10 year tenancy with no action taken by the Landlord until the unit was placed for sale I find that the Landlord did not take action within a reasonable time and prejudiced the Tenant's possible future right to compensation for the end of the tenancy due to a sale of the unit. For these reasons I find that the Notice is not valid for its stated cause and is cancelled. The tenancy continues, however going forward the Tenant is strongly cautioned to make all rent payments on time.

#### Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 23, 2023

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Residential Tenancy Branch