



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding QUAY WEST PROPERTIES INC. and VEYRON PROPERTIES  
GROUP LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, CNC

### Introduction

This hearing was set to deal with a tenant's application for cancellation of a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities ("10 Day Notice") and a One Month Notice to End tenancy for Cause ("One Month Notice").

Both parties appeared or were represented at the hearing. An occupant residing in the rental unit with the tenant also appeared with the tenant. The parties were affirmed. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I heard the tenant served the landlord's property manager with the proceeding package and the landlord did not take issue with service. I confirmed the tenant received the landlord's evidence package. Even though the landlord's evidence package was slid under the door of the rental unit, which is not a permissible method of service, the tenant acknowledged she received it and was prepared to respond to it. Accordingly, I deemed the tenant sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The landlord's agent requested the corporate owner of the property be named as a landlord. The tenant had named the property manager that was identified on the One Month Notice. The style of cause was amended by consent.

Although the tenant filed to dispute notices to end tenancy, the tenant did not provide copies of the notices she was seeking to dispute despite the requirement for her to do so under Rules 2.5 and 3.1 of the Rules of Procedure. However, the landlord did provide a copy of a One Month Notice and I confirmed with both parties that it was a

copy of the One Month Notice the tenant received and disputed. Accordingly, I relied upon the One Month Notice provided by the landlord.

I was not provided a copy of a 10 Day Notice by either party. However, both parties provided consistent statements that the 10 Day notice was nullified by payment of the outstanding rent within five days of receiving the 10 Day Notice of October 5, 2022. Accordingly, I proceed to deal with the One Month Notice only.

### Issue(s) to be Decided

Should the One Month Notice be upheld or cancelled? If the One Month Notice is upheld, when should the Order of Possession take effect?

### Background and Evidence

The tenant began occupying the rental unit in September 2015 with a different co-tenant. In September 2016 the tenant and a co-tenant executed a new tenancy agreement requiring payment of rent of \$775.00 by the first day of every month. In February 2021 the co-tenant moved out; however, the existing tenancy agreement continued. The tenant subsequently permitted another occupant to move into the rental unit. The parties were in agreement that the current monthly rent is \$854.00.

On October 5, 2022 the landlord posted the subject One Month Notice on the rental unit door. The tenant filed to dispute the One Month Notice within the time limit for doing so.

The One month Notice has a stated effective date of November 30, 2022 and the reason for ending the tenancy, as stated on the One Month Notice, is that the tenant is repeatedly late paying rent.

In the Details of Cause section of the One Month Notice, the landlord described the tenant as failing to pay rent on time for the following months: October 2022, January 2022, July 2021, November 2021, January 2021 and December 2020.

The landlord submitted that the tenant had been set up for rent payments by way of automatic debit; however, for the above described months the payment was declined by the tenant's bank due to insufficient funds. The tenant subsequently satisfied the unpaid rent by bringing cash to the landlord's office. The tenant was in agreement with these facts but pointed out that on one occasion the rent withdrawal was declined due

to a bank error and that she had received a note to that effect from her bank. The tenant did not submit into evidence a copy of the bank's note.

I heard consistent statements from both parties that after issuing the One Month Notice, the tenant cancelled the automatic debit payments and has brought cash to the landlord's office to pay rent for months up to and including the month of February 2023. The tenant has paid rent one time and in full since the One Month Notice was issued.

The landlord submitted that when the tenant's payments were declined by the bank, this placed an administrative burden on the landlord. The landlord explained that they would place a phone call to the tenant, set a time to meet the tenant to collect cash from her and on a number of occasions a 10 Day Notice was issued to the tenant.

The tenant denied that the landlord placed phone calls to the tenant. Rather, the tenant submitted that she would notice that a payment was declined in her banking records and that she would proactively reach out to the building manager to rectify the matter. The tenant submitted that the rent was late by only 24 to 48 hours.

The tenant explained that she has a brain injury and is on permanent disability income. As a result of her brain injury, the tenant finds management of her bank account to be a challenge, especially when there are several automatic debits and withdrawals; however, her mother has been helping her and paying on time has not been an issue since she switched to paying the landlord in cash.

The tenant is of the position that the landlord is motivated to end her tenancy because her rent is well below market rent and the landlord wants to renovate and re-rent the unit for a higher rent. The tenant is of the view that it is unfair to make the tenant, who has disabilities, homeless over rent payments that were only late by a day or two.

The landlord pointed out that this tenant has been the most challenging tenant as far as repeatedly paying rent late and that the landlord should not have the burden to act as a collection agency in trying to get rent from the tenant.

Both parties provided consistent testimony that warning letters were not issued to the tenant concerning the late payment of rent; however, the landlord was of the view that 10 Day Notices serve to put the tenant on notice that her rent is late. The tenant testified that she only received a 10 Day Notice on October 5, 2022 and more recently on February 1, 2023 even though she had paid the rent on February 1, 2023. The landlord acknowledged that the tenant did pay rent on February 1, 2023 and that the 10

Day Notice of February 1, 2023 was pre-maturely served; however, the landlord stated that several previous 10 Day Notices were not.

The landlord sought to raise the issue of late fees and NSF fees. In turning to the subject clause in the tenancy agreement i noted that it violated section 7 of the Residential Tenancy Regulations and that such terms are not enforceable even if the term was agreed to by both parties since parties cannot agree to act outside of the Act. I declined to hear the landlord's request for compensation for late and NSF fees since this proceeding was not set to deal with a monetary claim by the landlord. Rather, I encouraged the parties to rectify the issue of non-compliant late/NSF fees between themselves and if they cannot resolve that issue to make another Application for Dispute Resolution.

Before ending the teleconference call, I canvassed the parties with respect to an effective date for an Order of Possession if one were granted to the landlord. The landlord requested an Order of Possession effective at the end of February 2023. The tenant requested she be provided a month to vacate.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

In this case, the landlord is seeking to end the tenancy for repeated late payment of rent, which is a permissible reason for ending a tenancy under section 47 of the Act.

Residential tenancy policy guideline 38 provides information and policy statement with respect to repeated late payment of rent. The policy guideline provides as follows:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that 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.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

[My emphasis underlined]

The landlord pointed to six months where the tenant paid rent late. The tenant was in agreement that these months were paid late but argued one of the months was late due to a bank error. Although the tenant did not provide corroborating evidence of a bank error, if I were to accept the tenant’s testimony, that leaves five months that were paid late and five late payments exceeds the minimum requirement of three late payments.

There are gaps between the tenant’s late payments; however, I find the time between late payments is not so significant that they cannot be considered repeated. To illustrate: if during a 10 year tenancy the tenant was late twice in the first year and then late again 10 years later, I would not likely find the tenant “repeatedly” late since 10 years passed between late payments. In the case before me, the tenant’s late payments are only months apart.

In the case before me, the landlord issued the One Month Notice on October 5, 2022 when the rent for October 2022 had not yet been received. As such, I am satisfied the landlord acted in a timely manner and did not waive its entitlement to receive rent on or before the first day of every month.

Finally, as I told the tenant during the hearing, ulterior motives for ending this tenancy, if the landlord has them, are not relevant to the matter before me. The tenant has a contractual and statutory obligation to pay rent when due and failure to do so multiple times

is grounds for the landlord to end the tenancy due to the tenant's breach of contract and breach of the Act.

The tenant stated she has a brain injury that makes management of her bank account difficult; however, there is no exemption from the requirement to pay rent on time in the Act.

In light of the above, I uphold the One Month Notice and I dismiss the tenant's request for cancellation.

Section 55(1) of the Act provides as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case, I have dismissed the tenant's application to cancel the One Month Notice. Upon review of the One Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

Considering the date of this decision, I am of the view that an Order of Possession effective on February 28, 2023, as requested by the landlord, is unreasonable. Also considering the tenant has issues paying rent, I also find the tenant's request for an additional month to vacate to be unreasonable. Therefore, I issue an Order of Possession effective seven (7) days after service of the Order of Possession.

### Conclusion

The One Month Notice is upheld and the tenant's application is dismissed.

The landlord is provided an Order of Possession effective seven (7) days after service upon the tenant.

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: February 28, 2023

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Residential Tenancy Branch