



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding POM Holdings Inc.  
and [tenant name suppressed to protect privacy]

## **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. The Parties confirm receipt of each other's evidence. The Landlord notes that the Tenant's evidence was received late. The Landlord did not seek an adjournment.

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

Is the Tenant entitled to the cancellation of the notice to end tenancy?

### **Background and Evidence**

The following are agreed or undisputed facts: the tenancy started on November 1, 2019. Rent of \$4,200.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$2,100.00. On October 27, 2022 the Tenant received a one month notice to end tenancy for cause dated October 24, 2022 (the “Notice”). The reason set out on the Notice is that the Tenant has been repeatedly late paying rent. The Notice sets out details of the late rent payments.

The Landlord states that the Tenant has been late over a long period of the tenancy and specifically has been late paying rent for July, August, September and October 2022.

The Tenant does not deny the late rent payments but argues that the Landlord agreed to accept late rent. The Tenant argues that the Landlord established a consistent pattern of accepting late rent, on some occasions with the Landlord's clear express approval and that the Landlord was estopped from ending the tenancy for repeat late payments under the Act. The Landlord did not collect any late fees during the tenancy until October 2022 despite the provision being in the tenancy agreement. There was a regulation during the period of COVID and the period of the tenancy that prevented a landlord from ending a tenancy for late or repeat late rent. Further, the Landlord had been trying to sell the unit for some time and in August 2022, before the Notice was given, the Landlord informed the Tenant that the rental rate was too low and that the Landlord needed the unit for the Landlord's husband to occupy. The Landlord was seeking a mutual agreement to end the tenancy at that time however the Tenant informed the Landlord that if the Landlord served the Tenant with a two month notice to end tenancy for landlord's use the Tenant would comply.

The Landlord states that at no time did they agree to accept late rent payments and that the Tenant has been verbally warned a couple of time about meeting the rent date. The Landlord does not know when those warnings were given and has no evidence to support that verbal warnings were given. The Landlord states that in an email dated August 3, 2022 the Landlord asked for the late rent fee. The Landlord confirms that since giving the Notice to the Tenant no rents have been paid late.

### Analysis

Estoppel is a legal principle which loosely translates into preventing parties from "going back on their word". In the Supreme Court of Canada decision, *Ryan v. Moore*, 2005 2 S.C.R. 53, the court explained the issue of estoppel by convention as follows: 59 .... After having reviewed the jurisprudence in the United Kingdom and Canada as well as academic comments on the subject, I am of the view that the following criteria form the basis of the doctrine of estoppel by convention: (1) The parties' dealings must have

been based on a shared assumption of fact or law: estoppel requires manifest representation by statement or conduct creating a mutual assumption. Nevertheless, estoppel can arise out of silence (impliedly). (2) A party must have conducted itself, i.e., acted, in reliance on such shared assumption, its actions resulting in a change of its legal position. (3) It must also be unjust or unfair to allow one of the parties to resile or depart from the common assumption. The party seeking to establish estoppel therefore has to prove that detriment will be suffered if the other party is allowed to resile from the assumption since there has been a change from the presumed position.

It is undisputed that the Tenant repeatedly paid late rents over a lengthy period of the tenancy. It is undisputed that the Landlord explicitly allowed the Tenant to pay late rent on a few occasions. It is undisputed that the Landlord did not put anything in writing to warn the Tenant that late rent payments would not be tolerated. It is undisputed that the Landlord did not seek any late rent fees until the last moment. There is only vague and insufficient evidence that the Landlord verbally warned the Tenant about paying the rent on time. It is undisputed that up until the Notice was served the Landlord was communicating with the Tenant about ending the tenancy for other reasons. There is no evidence of any discussions with the Tenant about ending the tenancy for repeat late rent payments. Based on this evidence I find on a balance of probabilities that leading up to the Notice there was a shared assumption that late rent payments would be allowed without any detriment to the Tenant's right of possession of the unit and that the Landlord is now estopped from ending the tenancy for repeated late rent payments. The Tenant is entitled to a cancellation of the Notice and the tenancy continues. Going forward I caution the Tenant to ensure that rents are paid 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: March 15, 2023

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Residential Tenancy Branch