



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was reconvened from a hearing on February 10, 2023 regarding the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated October 16, 2022 (the "One Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Landlords and the Tenant attended this reconvened hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The original hearing resulted in an interim decision dated February 10, 2023 (the "Interim Decision"). This decision should be read together with the Interim Decision.

The parties acknowledged receipt of each other's documents served pursuant to the Interim Decision. I find the parties to be sufficiently served with each other's evidence in accordance with section 71 of the Act.

### Issues to be Decided

1. Is the Tenant is entitled to cancel the One Month Notice?
2. Is the Tenant entitled to reimbursement of the filing fee?

## Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on November 5, 2015 and is month-to-month. Rent is \$1,480.00 due on the fifth day of each month. The Tenant paid a security deposit of \$740.00. A copy of the tenancy agreement has been submitted into evidence.

The One Month Notice is dated October 16, 2022 and has an effective date of December 4, 2022. It states the reason for the notice is: "Tenant is repeatedly late paying rent". The details of cause on the notice are as follows:

*Rent is due and payable on the 5th of the month. Dates below show actual dates rent was paid.*

*2021*

*January 11th*

*March 7th*

*July 6th*

*2022*

*April 9th*

*June 6th*

*August 10th*

*September 8th*

*October 14th*

The Tenant acknowledged receipt of the One Month Notice on October 16, 2022.

The Landlords corrected that April 2022 rent was in fact paid on time. The Landlords stated that the tenancy was good for the first four or five years, when the Tenant gave post-dated cheques. The issues began when the Tenant started paying cash in 2020. One of the Landlords, WJ, stated he would go to the rental unit to collect the rent each month and give the Tenant a rent receipt.

The Landlords referred to emails sent to the Tenant in September and November 2020 reminding the Tenant that rent was overdue.

The Landlords submitted pictures and scans of the Landlords' carbon copies of rent receipts given to the Tenant. The Landlords stated that the Tenant had doctored several of the receipts she submitted to the Residential Tenancy Branch. The Landlords took pictures of their handwritten receipts placed next to the scanned receipts submitted by the Tenant to show that the receipt dates were different for the months of January 2021, July 2021, June 2022, and September 2022.

The Tenant argued that the parties had agreed for the Tenant to pay rent later in August and October 2022. The Tenant explained she was sick and had asked WJ if he could pick up the rent late, and he agreed. The Tenant stated that if both parties arranged to pay at a different time, her job is to make sure that she paid on the agreed upon date. The Tenant suggested that she was otherwise on time with the rent. The Tenant stated that she paid rent on January 5 and July 3, 2021, as well as April 5, June 5, and September 5, 2022.

The parties submitted their text message correspondence into evidence, which shows the following exchanges:

- On August 4, 2022, the Tenant texted WJ to say that she wasn't feeling well and suggested that the parties meet on August 10, 2022 for the rent. WJ replied saying, "Okay. Morning of 10th. Hope you are feeling better."
- In an undated text message, the Tenant asked WJ to pick up rent in the morning on September 8, 2022. WJ responded, "Okay. Will confirm time later." Further messages showed that the parties agreed to meet at 11:30 am on September 8, 2022.
- On October 3, 2022, the Tenant sent a text message to WJ asking to meet on October 14, 2022. The Tenant stated that she did not have enough money until then. WJ responded saying, "Okay. But maybe it's time for you to start looking for a new condo. Your rent is about \$400 lower than market level for that condo. When we meet we must discuss this."

The Landlords issued a notice of rent increase dated October 14, 2022 (the "Notice of Rent Increase"), which sought to increase the rent by \$29.60 per month effective January 5, 2023. The Tenant explained that she texted WJ to say she can accept an increase of \$20.00 per month instead. In a text message response to the Tenant, WJ stated in part: "If you think it is unfair to ask for a rent increase of less than \$30 after 7 years of occupancy, then I will happily deliver the eviction notice today. What would like me to do?"

WJ submitted that he told the Tenant he could evict her for late payment of rent and did not want to evict her. WJ stated that he was met by an angry and threatening tirade on the phone from the Tenant over \$9.60. The Landlords argued that they have been fair and reasonable, but the Tenant took the route of anger and bitterness.

The Landlords acknowledged that prior to the One Month Notice, they did not issue any notices to end tenancy for unpaid or late payment of rent to the Tenant.

### Analysis

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

#### **Form and content of notice to end tenancy**

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I have reviewed a copy of the One Month Notice and accept the Landlord's testimony that he signed the copy which was given to the Tenant. I find the One Month

Notice otherwise complies with the requirements set out in sections 52 and 47(2) of the Act.

I find the Tenant received a copy of the One Month Notice on October 16, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Records indicate that the Tenant submitted this application on October 16, 2022. I find the Tenant made this application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47(1)(b) of the Act states as follows:

**Landlord's notice: cause**

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(b) the tenant is repeatedly late paying rent; [...]

Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent further explains as follows:

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.

In this case, I accept the Landlords' evidence that the Tenant was late more than three times with paying rent in 2021 and 2022, namely for the months of January, March, and July 2021 as well as June, August, September, and October 2022. I do not find the Tenant's evidence that she had paid rent on time other than for August and October 2022 to be credible. I find the Tenant's claim that she had mostly paid rent on time to not be supported by any extrinsic evidence other than the black and white scans of rent receipts she submitted, which had different dates from those submitted by the Landlords. I prefer the payment dates put forth by the Landlords as I find they are supported by colour pictures of the carbon copy receipts in the Landlords' possession.

However, based on the text message correspondence submitted into evidence by the parties, I find the Landlords had agreed for the Tenant to pay rent late in August, September, and October 2022.

I also find the Landlords issued the Notice of Rent Increase after accepting late rent for October 2022. I find the Landlords previously accepted late payments of rent in 2021 and 2022 without issuing any warnings or notices to end tenancy to the Tenant.

The Supreme Court of British Columbia in *Guevara v. Louie*, 2020 BCSC 380 [*Guevara*] considered a decision of the Residential Tenancy Branch in which a tenant had been evicted for repeated late payment of rent. At paragraph 64 of the Court's decision, the Court found that the record before the arbitrator showed a period of years in which the landlord had acquiesced to rent being occasionally late. The Court noted that the landlord then gave the tenant notice of rent increase, which in the Court's view clearly suggested a continuation of the parties' relationship as landlord and tenant. The Court opined that no reasonable person in the tenant's position would have concluded that the landlord was contemplating terminating the lease for late payment until the tenant received the notice to end tenancy.

In setting aside the eviction, the Court in *Guevara* referred to the legal concepts of “waiver” and “estoppel”. According to the Court at para. 63, waiver requires a clear intention to forgo the exercise of a contractual right. Estoppel, on the other hand, does not require a reliance on unequivocal conduct, but rather whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it (*Guevara*, para. 63). The Court found that in light of the landlord’s “history of acquiescence”, the landlord could not rely on instances of late payments prior to the landlord’s notice to the tenant that the landlord would require the tenant’s strict compliance with the rent due date stated on the tenancy agreement (*Guevara*, para. 67). The Court concluded that the landlord was required to give the tenant reasonable notice that strict compliance would be enforced, before taking steps to terminate the tenancy for late payment, and such notice was not provided.

In other words, the landlord was estopped from enforcing strict compliance with the rent due date based on the landlord’s past acceptance of late rent from the tenant. The landlord was required to give the tenant reasonable notice first in order to re-assert the landlord’s right to receive rent on time.

Based on the evidence presented, I find the Landlords waived their right to receive rent on the fifth for the months of August, September, and October 2022, since WJ had agreed via text message to meet the Tenant for rent on other dates.

Furthermore, I find the issuance of the Notice of Rent Increase suggested an intention on the part of the Landlords to continue the tenancy despite the previous late payments of rent from the Tenant. I find the Landlords issued the One Month Notice on October 16, 2022 directly in response to disagreements over the Notice of Rent Increase. I note that the Landlords’ right to increase the rent and the validity or reasonableness of the Notice of Rent Increase are not issues to be determined as part of this application.

Under these circumstances, I find that similar to the case in *Guevara*, the Landlords are estopped from enforcing an eviction for late payments of rent prior to the One Month Notice, due to the Landlords’ history of silence and acquiescence. I also find the Landlords expressly agreed via text messages to receive rent late for the three months immediately preceding the One Month Notice. I find the Landlords did not give the Tenant reasonable notice that late payments of rent were no longer acceptable.

Therefore, I conclude the Landlords have not established cause for ending the tenancy under the One Month Notice and section 47(1)(b) of the Act. I order that the One Month Notice is cancelled and of no force or effect.

*2. Is the Tenant entitled to reimbursement of the filing fee?*

As the One Month Notice has been set aside on this application, I award the Tenant reimbursement of her filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Tenant to deduct \$100.00 from rent payable to the Landlords for the month of April 2023.

Conclusion

The One Month Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

Pursuant to section 72(2)(b) of the Act, the Tenant is authorized to deduct \$100.00 from rent payable for the month of April 2023 on account of the filing fee awarded.

**The Tenant is put on notice that moving forward, rent must be paid on time in accordance with the terms of the parties' tenancy agreement.**

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: March 17, 2023

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Residential Tenancy Branch