



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant November 03, 2022 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated October 27, 2022 (the “Notice”).

The Tenant appeared at the hearing with the Advocate. The Landlord appeared at the hearing with their spouse. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Tenant only submitted the Notice as evidence prior to the hearing. The Landlord submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord’s evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I have only referred to the evidence I find relevant in this decision.

### Adjournment

After I had gone through preliminary matters, gone over the tenancy agreement and explained the settlement option to the parties, the Tenant asked for an adjournment and said a family emergency had just arisen. The Tenant then said their mother had to go to the hospital a few days prior to the hearing and has a health issue. The Advocate mentioned the Tenant being a “wreck” and that if the Tenant has to move this is fine but that the Tenant is “not in a healthy place” at the moment.

The Landlord did not agree to an adjournment and noted that they had been waiting for this hearing since October of 2022.

I considered rule 7.9 of the Rules of Procedure about adjournments. I declined to grant an adjournment. I note that the Tenant did not raise the need for an adjournment until after I had outlined the possible outcomes of the hearing during the settlement discussion. I acknowledge that the Tenant was upset during the hearing; however, this seemed to be related to the possibility of having to move. The issue raised in the Application is very straightforward and there was no need to have a lengthy hearing. The Tenant had the Advocate with them to assist if needed. The family emergency did not come up during the hearing as claimed, it came up a few days prior to the hearing. The Tenant did not submit documentary evidence to support that an adjournment was necessary due to a family emergency. It would have been extremely prejudicial to the Landlord to adjourn this hearing when the Landlord had already waited four-and-a-half months for a hearing on the validity of the Notice. For all of these reasons, I denied the adjournment.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The parties agreed on the following. The tenancy started June 01, 2011. There was a written tenancy agreement between the Tenant and prior owner of the rental unit. The Landlord purchased the rental unit in 2015. Rent is currently \$827.00 due on the first day of each month.

The Notice was submitted. The Notice has an effective date of November 30, 2022. The grounds for the Notice are repeated late payment of rent. The Notice states that the Tenant paid rent late as follows:

- October 2022
- September 2022
- July 2022
- February 2022

- May 2021
- April 2021
- February 2021
- September 2020
- March 2020
- January 2020

There was no issue that the Notice was served on the Tenant, and received, October 27, 2022.

The Landlord confirmed the late rent payments as set out in the Notice. The Landlord confirmed the Tenant was issued 10 Day Notices for the late payments as shown in the evidence.

The Tenant testified as follows. The prior owners allowed the Tenant to pay rent on the 5<sup>th</sup> of each month because this was when the Tenant got paid. When the Landlord purchased the rental unit, they were okay with the Tenant paying rent by the 5<sup>th</sup> of each month. They have been paying rent by the 5<sup>th</sup> day of each month for all of these years with no problem.

The Tenant did not deny that they paid rent late as shown in the Notice.

In reply, the Landlord said they were okay with the Tenant paying rent by the 5<sup>th</sup> day of each month while the Tenant was working at a particular job; however, the Tenant has not been at that job for years. The Landlord said they sent a letter to the Tenant stating the Tenant had to pay rent in full by the first and pointed to the evidence.

The Landlord sought an Order of Possession effective April 30, 2023.

The Landlord submitted 10 Day Notices that had been issued to the Tenant for all of the 2021 and 2022 late rent payments outlined on the Notice. The Landlord submitted a letter dated September 08, 2022, reminding the Tenant that they must pay full rent by the first day of each month.

## Analysis

Section 26(1) of the *Residential Tenancy Act* (the “Act”) states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Notice was issued pursuant to section 47(1)(b) of the *Act*. The Tenant had 10 days to dispute the Notice. There is no issue the Tenant received the Notice October 27, 2022. The Application was filed November 03, 2022, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the Notice.

RTB Policy Guideline 38 addresses repeated late payment of rent and states in part:

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.

I find the Tenant paid rent late for the months noted on the Notice because the parties agreed about this. I find the Tenant had paid rent late 10 times in three years when the Notice was issued. I find the Tenant had paid rent late four times in 2022 when the Notice was issued. The late payments are not far apart. The Landlord did not fail to act in a timely manner after the most recent late payment because the Tenant paid rent late for October 2022 and was issued the Notice the same month. I find the Tenant is repeatedly late paying rent as that concept is described in the policy guideline.

The Tenant has not pointed to any exceptional circumstances, such as a bank error, as the reason for the late payments.

The Tenant submitted that their previous landlord and the Landlord allowed the Tenant to pay rent by the 5<sup>th</sup> of each month and that this was not a problem. I do not accept this. The Tenant paying rent late was clearly a problem since at least February 02, 2021, when the Tenant was issued a 10 Day Notice that is in evidence. If paying rent late was not a problem, the Landlord would not have issued the Tenant 10 Day Notices. The Landlord then issued the Tenant a 10 Day Notice every time the Tenant paid rent late as shown in the evidence submitted. Further, the Landlord made it clear to the Tenant in their September 08, 2022 letter that the Tenant was to pay full rent by the first day of each month. The Tenant again paid rent late the following month. I do not accept that the Tenant could reasonably believe that they could pay rent by the 5<sup>th</sup> day of each month when the Landlord issued them 10 Day Notices and sent them the September 08, 2022 letter.

I find the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 47(3) of the *Act*.

Given the above, I dismiss the dispute of the Notice without leave to re-apply and uphold the Notice.

Section 55(1) of the *Act* requires an arbitrator to issue the landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

Pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective at **1:00 p.m. on April 30, 2023.**

Conclusion

The Landlord is issued an Order of Possession effective at **1:00 p.m. on April 30, 2023**. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

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 22, 2023

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Residential Tenancy Branch