



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNR-MT, CNC, LRE, RPP, OLC**

### **Introduction**

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70;
- An order for the return of personal property pursuant to section 65;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both the tenant and the landlord attended the hearing. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord’s evidence package. Neither party had issues with timely service of documents.

### **Preliminary Issues**

The tenant filed this application for dispute resolution against the landlord named on the cover page of this decision and another person who used to be his landlord before the current landlord purchased the rental unit. The tenant testified that he does not seek an order against that previous landlord and asked that his application against the previous landlord be withdrawn. I granted the request, and the name of the previous landlord has been removed from the list of party names on the cover page of this decision.

The parties agree that the tenant paid the outstanding arrears recorded on the landlord’s two 10 Day Notices to End Tenancy for Unpaid Rent/Utilities within 5 days of being served with each of them. Pursuant to section 46(4)(a), the notices have no

effect and I dismiss the tenant's application seeking to dispute them. Likewise, the request for more time to dispute the notices to end tenancy for unpaid rent is no longer required.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy for cause under section 47 was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

#### Issue(s) to be Decided

Should the tenancy be ended for repeated late payments of rent?

#### Background and Evidence

The tenancy began with the previous landlord and the current landlord in this proceeding purchased the building which includes the tenant's rental unit on October 6, 2022. Rent is currently \$1,150.00 per month payable on the first day of each month.

The previous landlord gave the current landlord contact information for each tenant when selling her the building. This tenant's email address was misspelled as o.....tey@gmail.com instead of o.....teg@gmail.com. The tenant did not receive the landlord's October 11, 2022 introduction and instructions on how to send the rent by e-transfer, testified the tenant.

Despite this, the tenant texted the landlord on October 31, 2022, stating he received the notice of rent increase and informs the landlord that due to a change in his employment and remuneration schedule, he would pay rent for the next 3 months on November 4, December 2 and December 30<sup>th</sup>. The landlord responded "OK, *thanks for the heads up*" the same day.

On November 2<sup>nd</sup>, the tenant asked the landlord via text her preferred way to receive payment and the landlord responded with an email address for e-transfer. On November 4<sup>th</sup>, the tenant pays his rent by e-transfer and asks for confirmation he won't be evicted. The landlord responded, "*Hi [tenant's name], I received your rent, so you will not be evicted. But please pay the rent by the first in the future. Thank you*".

The landlord received December's rent payment on December 2, 2022, just as the tenant specified it would arrive based on his text dated October 31<sup>st</sup>.

The landlord testified that she received a statement of account from the previous landlord indicating this tenant paid rent on May 2, 2022 and June 3, 2022. The landlord provided interac notifications to prove the late payments. The tenant argues that the May 2<sup>nd</sup> payment was actually made the evening of May 1<sup>st</sup> and that there is always a delay between when it is sent and when it gets deposited. Further, the previous landlord never told the tenant that there were any issues with late rent. He never expected he would be served with a notice to end tenancy based on it, without any warnings or notifications from the previous landlord or this one.

On December 10, 2022, the landlord sent the tenant a 1 Month Notice to End Tenancy for Cause, citing repeated late payments as the reason for ending the tenancy. The tenant acknowledges receiving it on December 15<sup>th</sup> and filed an application to dispute it on December 25<sup>th</sup>, the tenth day after receipt.

### Analysis

I find the tenant filed his application to dispute the landlord's notice to end tenancy for cause within the 10 days as required under section 47(4) of the Act.

Pursuant to section 47(1)(b), a landlord may end a tenancy by giving a notice to end tenancy if the tenant is repeatedly late paying rent. According to Residential Tenancy Branch Policy Guideline 38, three late payments are the minimum number sufficient to justify a notice under that provision.

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.

When a tenant files an application to dispute a notice to end tenancy for cause, the onus falls to the landlord to prove the reasons for ending the tenancy pursuant to Rule 6.6 of the Rules of Procedure.

The landlord relies on evidence supplied from the previous landlord regarding late payments in May and June of 2022. While the landlord supplied an e-transfer notification to the previous landlord that rent was paid on May 2<sup>nd</sup>, I cannot determine when it was sent from the tenant's account or the actual time it was auto-deposited. I accept the tenant's testimony that he sent it the evening of May 1<sup>st</sup> and I find the delay in having it reach the previous landlord's account is reasonable. I do not consider May's rent payment late as the landlord has not established that it was sent on May 2<sup>nd</sup> instead of just being received on that date.

The payment of rent for June was made on June 3, 2022, and I accept the landlord's documentary evidence establishing that late payment of rent to the previous landlord.

I have considered the text message sent on October 31<sup>st</sup> where the tenant advises the landlord in advance the reasons for late payments for November and December. The landlord's response to the email conveys, in my opinion, an agreement that those late payments would be acceptable when she says, *“OK, thanks for the heads up”*. If this landlord was contemplating ending the tenancy for repeated late payments, she had the obligation at this time to advise the tenant that the late payments were unacceptable, or that on-time payment was a material term of the tenancy agreement.

In response to the tenant's November 4<sup>th</sup> question of whether he would be evicted, the landlord responds, *“Hi [tenant's name], I received your rent, so you will not be evicted. But please pay the rent by the first in the future. Thank you”*. I do not find this response to be an adequate notification that the tenancy may end for repeated late rent. In fact, I find it contradictory as the landlord appears to reassure the tenant that he will not be evicted approximately a month before serving the tenant with a notice to end tenancy for cause.

### Conclusion

I find the tenant was late in paying rent for the month of June, 2022.

While the tenant was late in paying November and December's rent, I find the landlord was given adequate notice of it on October 31<sup>st</sup> and the landlord has waived her ability

to rely on those late payments due to the agreeable response given to the tenant on that date. On November 4<sup>th</sup>, when the landlord asked that the tenant pay rent on the first of the month in the future, she did not re-establish any right to use the November and December late payments as instances to end the tenancy under section 47(1)(b).

Consequently, as there has only been one late payment for June 2022, the landlord has failed to satisfy me the tenant is repeatedly late paying rent. I find the notice to end tenancy for cause is without merit and I cancel it. This tenancy shall continue until it is ended in accordance with the Act.

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: May 03, 2023

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Residential Tenancy Branch