



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47;
- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

The landlord acknowledged service of the tenant's application and evidence submissions on file. The tenant's counsel stated she did not receive any evidence package from the landlord. The landlord acknowledged that he failed to serve the tenant. The landlord's evidence package except for the One Month Notice was excluded from these proceedings.

### **Preliminary Issue – Scope of Application**

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

## Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee?

## Background and Evidence

This tenancy began January 1, 2018 with a monthly rent of \$2500.00 payable on the 1<sup>st</sup> of each month. The current monthly rent is \$2535.00.

The landlord served the tenant with a One Month Notice (dated January 24, 2023) by mail on January 25, 2023. The One Month Notice was issued on the grounds of repeated late rent payments.

The tenant did not submit a copy of the One Month Notice on file. The only copy on file was submitted by the landlord. The One Month Notice on file is not signed by the landlord.

The landlord's son stated that the physical copy served to the tenant was signed, just the submitted digital copy was unsigned.

The tenant's counsel stated that the copy her client received and that she has on file was also unsigned.

## Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving a notice to end tenancy. Section 47(3) requires that a notice must comply with section 52 [form and content of notice to end tenancy].

Section 52 of the Act states as follows: **(emphasis for ease)**

### **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, and
- (e) when given by a landlord, be in the approved form.

The onus is on the landlord to establish that the Notice to End Tenancy met the form and content requirements of the Act. The landlord provided insufficient evidence that the copy served on the tenant was signed by the landlord as required by section 52 of the Act. The only copy provided on file was unsigned and the tenant's counsel also stated the copy she received was unsigned.

Further, the One Month Notice was issued on the grounds of repeated late rent payments. Other than a history of e-transfer transactions, there was no other evidence submitted on file regarding any action taken by the landlord for the alleged late payments. The evidence of rent payments on file shows that rent payments over much of the tenancy were at most 2-4 days late days depending on when the e-transfer payments were sent. This appeared to be a consistent pattern over the course of the tenancy. Again, it would need to be determined when exactly the transfers were sent by the tenant versus being deposited by the landlord, and I make no findings on that. I only note that given there may have been a pattern of 2-4 days late rent payments over the course of this tenancy, the landlord was cautioned that this could be interpreted as implied consent on the part of the landlord.

As such, the landlord was advised that if he was going to re-issue another One Month Notice on the same grounds, he may want to include additional evidence of any cautionary notices, 10 Day Notices for unpaid rent, or other correspondence by which he communicated to the tenant that 2-4 days late rent payments were not acceptable.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenant may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenant's application to cancel the landlord's One Month Notice dated January 24, 2023, which is hereby cancelled and of no force or effect. This tenancy continues 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 30, 2023

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Residential Tenancy Branch