



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, LRE, FFT

### Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s March 4, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the Act;
- (ii) an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70 of the Act; and
- (iii) authorisation to recover the cost of the filing fee under section 72 of the Act.

### Preliminary Issue – Amendment to the landlord’s name

The landlord corrected the landlord’s name. Pursuant to section 64(3)(a) of the Act, I amend the application to correct the name of the landlord.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?
4. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began May 1, 2004. Rent is \$1,026.12 due on the first day of the month. The landlord currently retains a \$340.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on March 3, 2023, by attaching a copy to the door of the rental unit. Page two of the Notice indicates that the tenant is repeatedly late paying rent. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the tenant has been late with rent 4 times from December 2022 to March 2023. In particular, the tenant was late with rent for:
  - December 2022 – rent was paid on December 7, 2022.
  - January 2023 – rent was paid on January 4, 2023.
  - February 2023 – rent was paid on February 6, 2023.
  - March 2023 - rent was partially paid on March 1, 2023. The balance was paid March 2, 2023.
- the tenant was warned via a letter sent on February 23, 2023, that there had been several late payments and was reminded that rent is due on the first day of the month. The tenant was further warned that any further late rent payments would jeopardize the tenancy. There is a letter submitted by the tenant as evidence, which confirms this information.

The tenant affirmed that:

- the tenant agrees with the landlord's submissions regarding the dates rent was paid.
- the tenant had exceptional circumstances for the late rent as the tenant was diagnosed with cancer in October 2022. The tenant subsequently had surgery and had to spend time recovering, which interrupted her income from October 2022 to May 2023. The tenant also had to undergo chemotherapy, which contributed to her paying rent late.
- the landlord should be estopped from evicting the tenant as the landlord has not provided clear warnings in the past that late payment will not be tolerated. The

tenant submitted as evidence (i) an email from the landlord on January 12, 2023, which informed the tenant that the tenant had a shortfall in rent and asked the tenant to pay the shortfall along with February 2023's rent; and (ii) an email from the landlord on February 7, 2023, confirming that the landlord had received the tenant's rent for February 2023. The tenant thought based on these emails that the tenant did not have to pay rent on time.

- the tenant believes the landlord has an ulterior motive for evicting the tenant, which is because the landlord does not approve of the tenant smoking in the rental unit (the tenant is allowed under the tenancy agreement to smoke).
- the grounds for eviction under section 47 of the Act is reserved for serious issues only and the tenant's lateness with paying rent does not qualify.

### Analysis

Under section 47(1)(b) of the Act, a landlord may end a tenancy by serving a One Month Notice to End Tenancy for Cause if the tenant is repeatedly late paying rent.

In addition, Residential Tenancy Branch Policy Guideline 38 (Repeated Late payment of Rent) ("PG38") clarifies that:

- 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 that the tenant is not entitled to an order cancelling the Notice for the following reasons:

- The landlord and tenant both agree that the tenant has been late with rent 4 times from December 2022 to March 2023. Therefore, the landlord was justified in issuing the Notice.
- The payments were repeatedly late because they occurred consecutively (4 times in 4 months).
- The landlord had acted in a timely manner as the most recent late rent payment was March 2023 and the landlord issued the Notice on March 3, 2023. The tenant was also warned via a letter sent on February 23, 2023, that there had been several late payments and was reminded that rent is due on the first day of the month. The tenant was further warned that any further late rent payments would jeopardize the tenancy. Therefore, I do not find that the landlord had waived reliance on section 47 of the Act.
- The exceptional circumstances provided by the tenant for the late rent payments was that the tenant was diagnosed with cancer in October 2022. I note that the example of an exceptional circumstance provided in PG38 is where an unforeseeable bank error has caused the late payment. While I empathize with the tenant's health situation, I do not find that being diagnosed with cancer is the same as an unforeseeable bank error. Regardless of the tenant's health, the tenant still has an obligation to pay rent. Therefore, I do not find that the tenant had exceptional circumstances, which justified the tenant's late rent payments.
- The landlord is not estopped from evicting the tenant as the landlord had warned the tenant via a letter sent on February 23, 2023, that there had been several late payments and was reminded that rent is due on the first day of the month. The tenant was further warned that any further late rent payments would jeopardize the tenancy. Following this, the tenant was late with rent again and the landlord issued the Notice on March 3, 2023.
- The fact that the landlord may have an ulterior motive for evicting the tenant is not relevant to this dispute. The tenant has a contractual and statutory obligation to pay rent the day it is due and repeated late rent payment is grounds for ending the tenancy under section 47 of the Act.
- The tenant's lateness with paying rent is serious enough to qualify for section 47 of the Act. I find this because under section 46 of the Act, it is possible for a tenant to be evicted by just 1 late rent payment. Therefore, I find that 4 late rent payments in 4 consecutive months is serious enough to qualify for section 47 of the Act.

Based on the above, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the tenant was not successful in its application, the tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

The tenant's other claim relates to the tenant's ongoing possession of the rental unit. I dismiss this remaining claim because the tenancy has ended.

### Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an order of possession.

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: July 11, 2023

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Residential Tenancy Branch