



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### Dispute Codes

Tenant: CNE, DRI-ARI-C, OLC  
Landlord: OPC, FFL

### Introduction

The Tenants (hereinafter referred to as the “Tenant”) filed an Application for Dispute Resolution on May 1, 2023 to dispute the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) served to them by their Landlord. They also seek the Landlord’s compliance with the legislation and/or the tenancy agreement and are disputing an additional rent increase.

The Landlord filed their Application for Dispute Resolution on May 25, 2023 seeking an order of possession of the rental unit in line with the same One-Month Notice. They also seek reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 22, 2023. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. At the start of the hearing, each party confirmed they received the Notice of Dispute Resolution Proceeding, and the other party’s evidence, in advance of the scheduled hearing as required.

### Preliminary Matter – issues indicated on the Tenant’s Application

On their Application, the Tenant indicated that they were disputing a rent increase for the Landlord, ostensibly imposed by the Landlord for capital expenses. As a note on their Application, the Tenant wrote “this is not a problem at this time.” Though testimony

in the hearing did centre on the Landlord's ideas about increasing the rent – reflected in past conversations with the Tenant – I find this issue indicated by the Tenant is not related to the key matter of the One-Month Notice. I dismiss this issue from the Tenant's Application, without leave to reapply.

Along with this, the Tenant indicated that they were seeking the Landlord's compliance with the *Act* and/or tenancy agreement. Their note on the Application concerns "the illegal rent increase by \$550". There was no evidence in place to show the Landlord had actually increased the rent; therefore, I dismiss this issue from the Tenant's Application, without leave to reapply.

The parties were quite clear in my review of the matter in the hearing that the subject of an increased amount of rent did not form the basis for the Landlord serving the One-Month Notice.

#### Issues to be Decided

A. Is the Tenant entitled to an order to cancel the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

B. Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

#### Background and Evidence

A copy of the tenancy agreement in place between the Landlord and the Tenant shows that agreement started on April 27, 2021. The agreement shows the rent amount of \$1,900 per month. Though the agreement indicates this is the monthly amount of rent, the agreement does not indicate which day of each month the Tenant shall pay that amount.

Both parties provided a copy of the One-Month Notice, signed by the Landlord on April 27, 2023. This gave the final end-of-tenancy date as May 31, 2023.

On page 2 of the document the Landlord indicated the following reasons:

- Tenant is repeatedly late paying rent.

The Landlord provided details on page 2:

Tenant has been late with rent the following months:

April 2022	Dec 2022
May 2022	Feb 2023
June 2022	March 2023
July 2022	April 2023
Aug 2022	
Oct 2022	

In their evidence, the Landlord provided records from their financial institutions, and summed up that information in a document showing the payments from May 1, 2022 through to August 1, 2023. One the document, there are 16 indications of late rent amounts, with 4 instances of the full rent payment provided by the Tenant in two parts. Each rent payment indicated as “late” is made on various dates in the calendar month indicated, with two instances of rent payments being completed on the 29<sup>th</sup> day of that calendar month. Accounting for 4 instances of staggered rent payments, the months listed correspond to those that the Landlord provided on page 2 of the One-Month Notice.

In the hearing, the Landlord reviewed the listed dates in which the Tenant made their rent payment late. The Landlord provided that they did not issue any 10-Day Notice to End Tenancy for Unpaid Rent to the Tenant for any of the months listed.

The Tenant in the hearing described the Landlord serving this One-Month Notice in “retaliation” because the Tenant would not agree to an increase in rent that was over the fixed rate permitted by the *Act*. The Tenant also described the Landlord’s efforts at trying to scare the Tenant if they did not sign a new lease for a higher amount of rent. They described the same scenario happening to one of their neighbours, “who ended up losing their home and all their stuff.” To illustrate this in their evidence, the Tenant provided an audio recording of their discussion with the Landlord wherein the Landlord was trying to get the Tenant to sign a new tenancy agreement. In the Tenant’s description, the recording demonstrates that the Landlord only wants money, despite being aware of the fixed 2% rent increase that the law allows for.

The Tenant also presented in the hearing that their payment from their job was not on a regular cycle due to the nature of the work they do. They stated the Landlord was “completely okay” with receiving rent as they had done in the past, *i.e.*, later than anticipated. The Tenant stressed that they communicated with the Landlord about rent payments.

The Tenant presented a copy of a 10-Day Notice to End Tenancy for Unpaid Rent. This bears the Landlord’s signature, dated April 6, 2023. Page 2 contains the Landlord’s notation that the Tenant failed to pay the rent, being \$2,450 on April 18, 2023. The Tenant described asking the Landlord for this document in order to present it as part of their application to receive assistance toward paying rent, via an agency. A witness (a representative of the agency that the Tenant was dealing with) attended the hearing and described speaking with the Landlord about this issue, and the witness confirmed that they needed an eviction notice, stating “our agency could only help when a 10-Day Notice is in place.” This witness also recalled the Landlord’s particular points about the Tenant here: they were a good tenant, and they were only late with rent payments one time in the past.

The Landlord, in response to this in the hearing, stated that this witness’ recollection of the conversation with the Landlord exists as hearsay. The Landlord was not present in the hearing to speak to this particular facet of the Tenant’s evidence and testimony.

### Analysis

I find there was a tenancy agreement in place between the parties. As it appears in the Tenant’s record in the form of individual pictures of the separate pages, and in the Landlord’s evidence in the form of a complete document, the agreement does not specify on what day the Tenant will pay the rent. This was the agreement in place since the start of the tenancy on April 27, 2021.

The *Act* s. 47 sets out the reasons for which a Landlord may give a One-Month Notice. This includes the reason indicated on the One-Month Notice that the Landlord served to the Tenant here.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. I find the Landlord did not provide sufficient evidence in this matter that outweighs that of the Tenant, who pointed to the Landlord’s apparent acquiescence on the matter of rent payments not being on time.

As set out above, the due date for rent is not set out in the tenancy agreement. Presumably that information would be clear to the Tenant from the start of the tenancy. I find it was not; this lends credence to the Tenant's account that the Landlord was not taking issue with late rent payments, or staggered rent payments, from the Tenant in the past.

The Landlord – via their agent in the hearing – did not present that they raised the issue of late/staggered rent payments to the Tenant in the past. The pattern continued for quite some time. The number of instances listed by the Landlord in their evidence undermines the Landlord's contention – in the form of the One-Month Notice – that it was a problem. There is no record of the Landlord stating clearly to the Tenant that rent is due on a certain day – undefined in the record – and that the Landlord would pursue an end of the tenancy should the pattern persist.

I find the Landlord's veracity in the matter is also affected by the evidence that shows the Landlord created a false end-of-tenancy notice with this Tenant. The document is mis-dated, and, by setting out that a rent amount was due on April 18<sup>th</sup>, appears to contradict the Landlord's other evidence that appears to rely on the 1<sup>st</sup> of the month as the rent-payment due date. This was a legal document also signed by the Landlord that appears in the evidence.

Further, from the witness' testimony, it appears the Landlord created this document for the purpose of assisting the Tenant in obtaining an alternate source of funding to support the tenancy. That in itself contradicts the fact of the Landlord seeking to end the tenancy for a related reason.

Though the Landlord's agent raised the issue of hearsay in the witness' discussion of the matter with the Landlord, as recalled by that witness in the hearing, I note the Landlord did not appear to present the matter in the hearing from their perspective. This evidence is direct testimony from a witness who spoke first-hand of their discussion with the Landlord; therefore, I give it weight in this matter, and there is no other evidence present to show the discussion with the witness did not happen. I therefore find the witness statement (*i.e.*, the Landlord's summation of the Tenant as a good tenant and only once late on rent) to be fact.

For the reasons of the non-specific rent due date, and the apparent Landlord consent to a sustained pattern of staggered/late rent payments, I dismiss the One-Month Notice

the Landlord intends to rely on to end this tenancy. There is no order of possession to the Landlord, and the tenancy shall continue.

The Landlord was not successful on their Application for an order of possession; therefore, I grant no reimbursement of the Application filing fee.

### Conclusion

For the reasons outlined above, I order the One-Month Notice issued on April 27, 2023 is cancelled and the tenancy remains in full force and effect. I dismiss the Landlord's Application for an Order of Possession for this reason, with no reimbursement of the Application filing fee.

For the reasons listed in the preliminary section of this decision, I dismiss the other issues indicated by the Tenant on their Application.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 23, 2023

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Residential Tenancy Branch