



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNC CNR FFT

### Introduction

The tenants dispute a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and a One Month Notice to End Tenancy for Cause (the “One Month Notice”) pursuant to sections 46(4) and 47(4), respectively, of the *Residential Tenancy Act* (“Act”). In addition, the tenants seek to recover the cost of the application filing fee pursuant to section 72 of the Act.

Attending the hearing was one of the tenants and the landlord. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

### Preliminary Issue 1: Tenant’s Request for Adjournment

The tenant requested an adjournment on the basis that he was in a motorcycle accident (in September 2021), suffers from anxiety attacks, has trouble remembering things, and requires more CT scans. I asked him what purpose would be served by an adjournment or whether he would be seeking some sort of support or assistance, and he remarked that perhaps he would retain a lawyer.

The landlord opposed any adjournment, remarking that the tenant has been given “so many chances” and that this is the third eviction hearing in as many years. The landlord wanted the hearing to proceed.

Rules 7.8 through 7.11 of the Residential Tenancy Branch’s *Rules of Procedure* address adjournments. Rule 7.9 sets out the criteria that I must consider when allowing or denying a party’s request for an adjournment. One criterion is the possible prejudice to each party. In this case, it is not lost on me that the tenant appears to suffer from a brain injury caused by an MVA several months ago. His doctor’s letter submitted into evidence supports this fact. However, the landlord would also suffer prejudice from having this matter delayed another several months.

While the tenant certainly appears to suffer from impairment and memory recollection issues, he nevertheless demonstrated the ability to dispute the two notices on time, had the ability to submit evidence before the hearing, and appeared to have no difficulty in serving his evidence on the landlord. He also demonstrated an ability to attend the hearing and appeared to be reasonably articulate and organized. The reason I say all of this is that the tenant filed his application on January 25, 2022 and received from the Branch the Notice of Dispute Resolution Hearing sometime shortly after February 9. In other words, the tenant had a little over two months to obtain any necessary legal assistance or advocacy before the hearing but did not. I am satisfied, based on everything that the tenant told me during the hearing, that he had the capability of retaining legal or advocate representation.

In the interests of ensuring a fair and efficient process for resolving the dispute between the tenants and the landlord (Rule 1.1 of the *Rules of Procedure*), and for the reasons set out above, it was my determination that the tenant's request for an adjournment should not be granted.

#### Preliminary Issue 2: 10 Day Notice

The 10 Day Notice was only briefly referred to by the parties during the hearing, and the landlord provided no substantive testimony or any submissions in respect of this specific notice. The onus falls on a landlord who issues a notice to end a tenancy to prove the ground on why that notice was issued. Given that the landlord has not proven the ground on which the 10 Day Notice was issued, it is my finding that the 10 Day Notice is hereby cancelled. It is of no legal force or effect. Only the One Month Notice shall be addressed below.

#### Issues

1. Are the tenants entitled to an order cancelling the One Month Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to recover the cost of the application filing fee?

#### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in 2007. Monthly rent is currently \$1,741.59. Rent is due on the first day of the month. A copy of the written tenancy agreement was in evidence.

The landlord served the One Month Notice by registered mail on January 17, 2022. A copy of the One Month Notice was in evidence, and it appears to have been completed correctly (in compliance with section 52 of the Act). The reason stated for ending the tenancy was that the tenant was repeatedly late paying rent.

The landlord testified, and provided documentary evidence to support his testimony, that the tenant has been late almost every month for the last couple of years. The landlord has issued many warning letters (three of which were in evidence, as examples) about the late rent payments. "I gave him lots of chances," remarked the landlord. A rent ledger and payment history document were also submitted. In addition, photocopies of a total of 17 late payment cheques were in evidence. Eleven of the cheques were dated for the second and third of the month.

The tenant testified that he always paid the rent on time, and that he mails the cheques to the landlord (presumably on the first day of the month). But, the tenant argued, the landlord does not actually deposit the cheques until the third or fourth day of the month. In one case, the landlord deposited two cheques on the same date.

### Analysis

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenancy agreement for this tenancy requires that the tenants pay rent on the first day of the month.

Section 47(1)(b) of the Act states that a landlord may end a tenancy by giving notice to end the tenancy when the tenant is repeatedly late paying rent.

*Residential Tenancy Policy Guideline 38* states 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."

In this dispute, the landlord argues that the tenants were repeatedly late paying rent over a period of a few years, and his numerous warning letters (a few of which were in evidence) establish that this was the case.

While the tenant argued that he in fact sent the landlord his rent cheques on the first day of the month, the problem is that most of the rent cheques (copies of which, as I noted, were in evidence) were dated for *after* the first day of the month. In other words, the cheques themselves could not have been negotiated until a date beyond the date on which rent was due. The cheques themselves are persuasive evidence proving that the tenants were repeatedly late paying rent within the last two years.

Whether a landlord chooses to negotiate (that is, “cash”) a rent cheque the day it was received, or a few weeks later, is irrelevant. What is relevant and important is that the rent is paid on time and in the case of a payment of rent by cheque, that the cheque be negotiable on the date that rent is due.

Taking into consideration all the oral and documentary evidence before me, it is my finding that the landlord has proven, on a balance of probabilities, the ground (that is, section 47(1)(b) of the Act) on which the One Month Notice to End Tenancy for Cause was given. Accordingly, the tenants’ application to cancel the One Month Notice is dismissed and the One Month Notice is upheld. The tenants’ application for recovery of the cost of the application filing fee is similarly dismissed.

Pursuant to section 55(1)(b) of the Act the landlord is granted an order of possession of the rental unit. A copy of the order of possession is issued in conjunction with this decision, to the landlord. The landlord must serve a copy of the order of possession on the tenants by any method of service permitted under section 88 of the Act.

### Conclusion

**The tenants’ application is dismissed, in its entirety, without leave to reapply.**

**The landlord is granted an order of possession of the rental unit.**

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 26, 2022

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Residential Tenancy Branch