



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC MNDC FF

### **Introduction**

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 11:16 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord submitted a letter, dated February 27, 2017, addressed to both the tenant and the Residential Tenancy Branch stating that he would not be able to attend the scheduled hearing. The letter stated that the landlord had asked the tenant if "he would agree to defer and postpone the hearing, but he was uncooperative and refused by request". The landlord did not make a formal application to adjourn the hearing, nor did he appoint an agent to attend on his behalf for the hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant provided sworn, undisputed testimony that he had served the landlord with his application for dispute resolution hearing package ("Application") and evidence by way of registered mail on February 3, 2017. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application and evidence.

The tenant confirmed receipt of the 1 Month Notice, with an effective date of February 28, 2017, on January 31, 2017. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

### **Issues**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to monetary compensation for loss or other money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recovery of his filing fee for this application from the landlord?

### **Background and Evidence**

The tenant provided the following undisputed testimony as the landlord did not attend. This month-to-month tenancy began in October 2014, with monthly rent set at \$1,150.00, payable on the first of each month. The landlord collected, and still holds, a security deposit in the amount of \$550.00. The tenant continues to reside in the basement rental suite.

The tenant testified that he had received the landlord's 1 Month Notice after obtaining an order from the Residential Tenancy Branch to allow him to use the dryer. The tenant testified that the landlord was upset, and he had received the 1 Month Notice a week later. The tenant was unable to provide the file number for the dispute.

The tenant disputes the reason provided on the landlord's 1 Month Notice which stated that the "tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord". The tenant testified that the landlord had accused him and his children of being too loud, and for bothering the other occupants. He testified that his kids were three and six years old, and the noise was the result of them playing. He testified that he resided in the basement suite, while other tenants resided upstairs.

The tenant is seeking cancellation of the landlord's 1 Month Notice, as well as monetary compensation in the amount of \$200.00 for "Loss of wages" as indicated on his monetary worksheet, and recovery of the filing fee.

### **Analysis**

According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant received the 1 Month Notice on January 31, 2017, and filed his application on February 3, 2017. Therefore, the tenant is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice, and this tenancy is to continue as per the *Act*.

As the tenant was successful in his application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application.

The tenant had also made an application for \$200.00 in monetary compensation for time taken off work in order to file his application. The tenant did not submit any documents supporting this claim. Accordingly, I dismiss this portion of the tenant's application.

### **Conclusion**

I allow the tenant's application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice of January 31, 2017 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for \$200.00 in monetary compensation is dismissed.

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: March 23, 2017

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Residential Tenancy Branch