



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT, RP, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:17 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

As the tenant confirmed that they received the 1 Month Notice posted on the tenant's door by the landlord on May 22, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant gave undisputed sworn testimony that they handed a copy of the tenant's dispute resolution hearing package and written evidence package to the only agent that the landlord has used to communicate with the tenant during this tenancy on June 25, 2018. The tenant provided written evidence to demonstrate that this person was his sole contact for the purposes of paying rent during this tenancy. I find that the landlord was served with this

package in accordance with sections 88 and 89 of the Act. The landlord provided no written evidence for this hearing.

### Issues(s) to be Decided

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 a monetary award for losses and damages arising out of this tenancy? Should any repair orders be issued against the landlord for this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, screenshots of text messages, miscellaneous letters and e-mails, and the testimony of the tenant, not all details of the tenant's submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant entered into written evidence a copy of the landlord's 1 Month Notice in which the landlord sought an end to this tenancy for cause on June 30, 2018 for the following reason:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

The landlord included a comment in the 1 Month Notice in which the landlord advised that they were seeking an end to this tenancy because of the tenant's "playing loud music in the middle of the night."

Although the tenant did not complete a Monetary Order Worksheet in support of the tenant's application for a monetary award of \$5,000.00, the tenant did submit a document which outlined the breakdown of the monetary award the tenant was seeking. This document summarized the requested monetary award as follows:

Item	Amount
Hours Dealing with Situation (20 hours at 5 days - 1 Day going to RTB, evidence)	\$1,000.00
Missed Week of Work (20 hours at 5 days)	1,375.00

Mental Anguish	2,000.00
Missed Work while dealing with this	500.00
Gas to drive to get evidence, RTB	125.00
<b>Total Monetary Order Requested</b>	<b>\$5,000.00</b>

The tenant also supplied a number of text messages, emails, photographs and statements to support this application.

### Analysis

As the landlord has not attended this hearing and has not submitted any written evidence, I allow the tenant's application to cancel the landlord's 1 Month Notice.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord has contravened the *Act*, *Regulation* or the tenancy agreement to the extent that a monetary award should be issued to the tenant.

In considering this matter, I have given consideration to RTB Policy Guideline 16, which provides guidance to arbitrators when considering an application for a monetary award for losses or damages. Policy Guideline 16 reads in part as follows:

*An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.*

As explained at the hearing, the only hearing related item where there is a provision for a party to recover costs from the other party is the filing fee for the application for dispute resolution. As the tenant has been successful in cancelling the 1 Month Notice and in accordance with section 72 of the *Act*, I allow the tenant's application to recover the \$100.00 filing fee for this application from the landlord.

As there is no other legislative provision for the recovery of hearing related costs, I dismiss the tenant's application for the first two and the last two of the items the tenant identified in the above-noted request for a monetary award. The *Act* does not allow for compensation for the number of hours devoted to working on dispute resolution applications, preparation for hearings, gas expenses to or from the RTB or to obtain evidence, or for missed work time resulting from the landlord's issuance of a Notice to End Tenancy.

Policy Guideline 16 provides the following assistance in considering other types of damages or losses, which I have considered with respect to the tenant's \$2,000.00 claim for mental anguish.

*An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:*

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*
- *“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*

In this case, the tenant has not specifically requested aggravated damages in their application. At the hearing, the tenant also explained that the monetary claim submitted was intended to act as a financial deterrent to the landlord for having unfairly initiated a process whereby the tenant had to devote considerable time and effort to dispute the allegations made that led to the issuance of the 1 Month Notice. I find that the tenant was attempting to impose a penalty against the landlord for having forced the tenant to suffer the mental anguish and lost work that the tenant experienced. RTB Policy Guideline 16 specifically states that any amount arrived at for damage or loss "must be for compensation only, and must not include any punitive element." As I find that the tenant failed to identify their claim as one for aggravated damages and also sought a monetary award against the landlord for punitive purposes, I dismiss the tenant's application for a monetary award for mental anguish without leave to reapply.

Although the tenant submitted photographs of vines covering a portion of this rental building, the tenant did not provide anything to establish the tenant's claim that this rental building was not "up to code", a statement included in the tenant's application. In the absence of any substantive evidence in this regard from the tenant, I dismiss the tenant's application for repairs to this rental property.

Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, which is no longer of any force or effect. This tenancy continues until ended in accordance with the *Act*.

As the tenant has been partially successful in this application, I allow the tenant to recover the \$100.00 filing fee for this application. To implement this finding, I order the tenant to reduce one monthly rent payment in the future by \$100.00 as a means of recovering this filing fee from the landlord.

The remainder of the tenant's application 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: July 23, 2018

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Residential Tenancy Branch