



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing dealt with the applicant'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;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The applicant, the applicant's assistant (collectively the "applicant") and the landlord along with landlord's legal counsel (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Status of Parties

The landlord purchased the property approximately two and half years ago and at that time the landlord assumed a tenancy for this unit. The landlord did not receive a tenancy agreement from the previous owner and therefore entered into a new tenancy agreement with that tenant effective October 1, 2016.

As per the testimony of the parties, on an undisclosed date the applicant became a room-mate to the existing tenant. As a result, a new tenancy agreement was drafted and signed on April 28, 2018 which included the existing tenant and the applicant. As

evidenced by the applicant's documentary submission, this agreement is signed by the landlord's agent and applicant only. This tenancy agreement reflects a month- to-month tenancy with an effective date of May 1, 2018. Rent in the amount of \$1,644.00 is payable on the first of each month.

Sometime between April 28, 2018 and June 12, 2018 the existing tenant vacated the unit. Neither party provided a concrete date of the existing tenant's vacancy. During this time rent in the amount of \$1,644.00 was paid to the landlord.

It is the landlord's position that because the existing tenant, who had a valid tenancy agreement with the landlord, vacated and did not sign the April 28, 2018 tenancy agreement, he did not accept the terms of the April 28, 2018 tenancy agreement. The landlord argued that as a result, the applicant remains a room-mate with no legal rights under the *Act*.

In reply, the applicant contends that he signed a valid tenancy agreement on April 28, 2018 and has paid rent which the landlord has readily accepted.

In order to have a tenancy agreement, there must be an intention by the parties to form the legal relationship of landlord and tenant. Subsection 6(1) of the *Act* sets out that the rights, obligations and prohibitions established under this *Act* are enforceable between a landlord and tenant under a tenancy agreement.

In this case, it is clear that a tenancy agreement was signed between the applicant and landlord on April 28, 2018. The absence of the existing tenant's signature does not negate the validity of this agreement. I find the conduct of the parties demonstrates intention by the parties to form the legal relationship of landlord and tenant. The landlord drafted, signed and collected the tenancy agreement. The evidence suggests that the landlord learned of the existing tenant's vacancy in June 2018, yet made no attempt to collect the existing tenant's signature prior to this. The landlord continued to collect rent after the existing tenant's vacancy and has provided insufficient evidence to establish this was for use and occupancy only. Further, the landlord issued a 1 Month Notice to the applicant on July 31, 2018. Such actions are contrary to the landlord's position that a tenancy did not exist between the parties.

On the basis of the documentary evidence and sworn testimony of the participating parties, I find that the applicant is a tenant to the tenancy agreement signed April 28, 2018 and is therefore entitled to rights and responsibilities under the *Act*.

Issue(s) to be Decided

Is the tenant entitled to cancel the landlord's 1 Month Notice?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant acknowledged receipt of the landlord's 1 Month Notice dated July 31, 2018, by way of posting. The 1 Month Notice does not indicate any grounds to end the tenancy.

The tenant testified that at one point, the landlord offered to rescind the 1 Month Notice in exchange for agreement to pay a rent increase in excess of the amount allowable under the *Act*. The tenant seeks an order for the landlord to comply with the *Act*, *Regulation* and tenancy agreement.

The landlord denies this was an attempt to increase the rent; rather the landlord testified that this was effort to negotiate a new tenancy agreement with a new rental rate.

The tenant is also seeking to recover the \$100.00 filing fee for this application from the landlord.

Analysis

Section 52 of the *Act* establishes that in order to be effective, a notice to end tenancy must be in writing, must state the grounds for ending the tenancy and be in the approved form. Based on the notice before me, which does not state the grounds for ending the tenancy, I find the tenant was served with an ineffective notice. Due to the ineffective notice, I find the landlord is not entitled to an order of possession and the tenancy continues until it is ended in accordance with the *Act*.

Section 42 of the *Act* establishes that a notice of a rent increase must be in the approved form and issued no sooner than 12 months from the date on which the tenant's rent was first payable. Pursuant to section 43 of the *Act*, a landlord may

impose a rent increase only up to the amount calculated in accordance with the *Regulations*. As such I find that any rent increase issued to the tenant prior to May 1, 2019 or in excess of the calculation in the *Regulations*, is not in compliance with sections 42 and 43 of the *Act*. Therefore, I find rent for this tenancy is \$1,644.00 and I order that any future rent increases be implemented in accordance with the *Act* and *Regulations*.

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

### Conclusion

The tenant's application to cancel the 1 Month Notice is upheld.

I order that the landlord accept the \$1,644.00 in monthly rent as agreed upon at the start of tenancy, and that any future rent increases be implemented in accordance with the *Act* and *Regulations*.

I issue a monetary order in the tenant's favour in the amount of \$100.00 against the landlord.

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: October 1, 2018

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Residential Tenancy Branch