



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC RP OLC

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*;
- an Order for the landlord to make repairs to the rental unit or property, pursuant to section 32 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence, served by Canada Post registered mail. The tenant confirmed receipt of the landlord's evidence, served in person. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

### Preliminary Issue – Amendments to the Tenant's Application for Dispute Resolution

At the outset of the hearing, the landlord confirmed that the spelling of her first name was incorrect on the tenant's Application. Also, the parties confirmed that the rental unit address provided on the tenant's Application was incorrect.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to correct the landlord's first name and to correct the dispute address.

### Preliminary Issue – Unrelated Claims

The tenant's Application included unrelated claims for repairs to be made to the rental unit and an order for the landlord to comply with the *Act* and tenancy agreement, in addition to the tenant's claim to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the above-noted claims are not related to the tenant's Application to cancel the One Month Notice. Therefore, all of the tenant's claims except for her Application to dispute the landlord's One Month Notice are dismissed, and I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*.

### Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? And if not, is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence, which indicated that this month-to-month tenancy began on March 1, 2017. However, the parties confirmed that the tenancy agreement with the tenant began March 2016 and included her now ex-spouse. A new written agreement was created March 2017 to reflect the removal of the tenant's spouse from the original tenancy agreement.

The parties confirmed that the rental unit is a three-bedroom ground level unit, equipped with its own kitchen and bathroom. The tenant resides in the rental unit with her two children.

Monthly rent of \$1,200.00 is payable on the first of the month. The tenant paid a security deposit of \$600.00 at the beginning of the tenancy, and this deposit continues to be held by the landlord.

The tenant confirmed that the landlord served her in person on August 23, 2018 with only the first page of the One Month Notice dated August 23, 2018. The tenant testified that she was not served with the second page of the One Month Notice.

The tenant uploaded only the first page of the One Month Notice into documentary evidence. The landlord did not upload any pages of the One Month Notice into documentary evidence. The landlord testified that she gave the tenant the second page of the One Month Notice as she stated that she had signed the second page. I note that there is not place for the landlord to sign on the second page. The landlord's signature is only required on the first page of the notice.

I questioned the landlord regarding which boxes she had checked off on the second page of the One Month Notice. The landlord was unable to confirm that information as she did not have the second page of the Notice.

The landlord provided verbal testimony regarding the tenant paying rent late or in multiple payments over the course of the month. The landlord submitted a spreadsheet into evidence as documentation of the dates when the tenant made rent payments late or in partial payments.

The tenant acknowledged that she had been on social assistance and struggled at times to make full rent payments on time. She testified that she had discussed with the landlord the option of making several partial payments in the month. The tenant testified that the landlord was agreeable to the arrangement as long as the tenant paid the full rent amount. The landlord disputed this testimony and stated that she did not recall that conversation, but acknowledged that she has been very patient with the tenant, and that she would accept partial rent payments from the tenant when the tenant said she would only be able to make a partial payment.

The tenant testified that she is now working, and both parties agreed that since August 2018 the tenant has been paying her rent in full.

The landlord also provided testimony regarding the tenant and her children making noise, which interferes with the landlord's ability to sleep during the day creating issues for the landlord who works night shift. The landlord also testified that the tenant allowed her grandmother to stay with her for four months during the end of 2016 into 2017, and the landlord felt that was another reason for issuing the notice to end the tenancy.

The tenant explained that her grandmother had been visiting when significant medical issues arose, preventing her grandmother from flying back home until the medical condition was addressed. As a result, her grandmother stayed with her for four months.

### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 47(3) of the *Act*, requires that a notice under this section must comply with the form and content requirements of section 52 of the *Act*.

The tenant acknowledged receiving the landlord's One Month Notice on August 23, 2018.

The tenant filed an application to dispute the notice on August 28, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Section 52 of the *Act* provides that:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*,  
**state the grounds for ending the tenancy,**
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
  - (e) **when given by a landlord, be in the approved form.**
- [My emphasis added]**

The approved form for a one month notice to end tenancy for cause includes two pages. The bottom of the first page clearly states:

*This is page one of a two-page Notice.  
The landlord must sign page one of this Notice and must give the tenant pages  
one and two.*

The bottom of the second page clearly states:

*This is page two of a two-page Notice.  
The landlord must sign page one of this Notice and must give the tenant pages  
one and two.*

The top half of the second page provides a section for the landlord to check off the appropriate box relating to the reason, or grounds, for ending the tenancy. The next section entitled “Details of Cause” states that the notice may be cancelled if details are not described.

The landlord issuing the One Month Notice is required to choose from the appropriate grounds listed for ending the tenancy provided on page two, and is required to state the details pertaining to the reasons for ending the tenancy. The landlord must ensure that the tenant is clearly aware of the case being made against them, so that the tenant has a full and fair opportunity to prepare their evidence in order to dispute those claims, should they wish to.

In this matter, the landlord was unable to provide sufficient evidence that she served the tenant with both pages of the One Month Notice, nor was the landlord able to provide verbal testimony regarding which of the reasons for ending the tenancy was selected on the second page of the notice, as she did not have the notice.

Therefore, based on the testimonies of both parties and the evidence before me, on a balance of probabilities, I find that the landlord failed to serve the tenant with a notice that was in the approved form and stated the grounds for ending the tenancy.

As such, I find that the landlord's notice is not an effective as it does not comply with the form and content requirements of section 52 of the *Act*.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

### Conclusion

The tenant was successful in her application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated August 23, 2018 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

I find that the tenant's claims for an order for the landlord to comply with the *Act* and for an order for repairs are unrelated claims on the application and are dismissed with leave to reapply.

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 12, 2018

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Residential Tenancy Branch