



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On October 1, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant and Landlord both attended the hearing. All parties provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package and evidence by registered mail and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package and evidence.

The Landlord advised that she served her evidence to the Tenant by registered mail on October 30, 2018 and the Tenant confirmed that she received this evidence. As service of this evidence complies with Rule 3.15 of the Rules of Procedure, I have accepted and considered this evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 1, 2015 and rent was currently established at \$1,112.50 per month, due on the first of each month. A security deposit of \$535.00 was paid.

Both parties provided differing testimony with respect to how the Notice was served. The Landlord stated that the Notice was served in person on September 23, 2018, whereas the Tenant stated that the Notice was placed in the mailbox.

The Landlord did not check off a reason on the back of the Notice to indicate why she served the Notice. As well, the Notice did not indicate an effective end date either.

#### Analysis

With respect to the Notice served to the Tenants, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. This Section requires that the Notice state the effective date of

when the tenancy will end and must also indicate the reason for service of the Notice. Without this information, I am satisfied that this Notice does not meet the requirements of Section 52.

As such, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. Therefore, I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

As the Tenants were successful in this application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application by withholding this amount from a future month's rent.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of September 23, 2018 to be cancelled and of no force or effect.

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: November 13, 2018

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Residential Tenancy Branch