



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for the recovery of the filing fee paid for this application.

The Tenant and an agent for the Landlord (the “Landlord”) were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Landlord did not submit any documentary evidence prior to the hearing. Neither party brought up any concerns with service and as such, I find that the Landlord was duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matter

During the hearing, the agent for the Landlord clarified the business name of the Landlord. As the Application for Dispute Resolution named the agent as the Landlord, this was amended to the business name of the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on or around August 1, 2016. Current monthly rent is \$2,200.00 and a security deposit of \$1,100.00 was paid at the outset of the tenancy. A tenancy agreement was submitted into evidence and was for a second fixed term, set to begin on November 1, 2017.

On September 21, 2018, the Landlord served the Tenant with a One Month Notice through registered mail. The One Month Notice, dated September 20, 2018, was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord

The Landlord stated that there was an incident on July 15, 2018, as reported to him by the strata corporation of the rental building. A one-page incident report was submitted in the Tenant's evidence outlining what occurred. The strata informed the Landlord that on the night of the incident, the Tenant became physical with the security guard.

The Landlord stated that after receiving information about the incident, the owner of the rental unit asked him to serve the Tenant with a One Month Notice.

The incident report indicates that the Tenant pushed the security guard and used abusive language towards the security guard. The Landlord stated that he did not have information about the incident, other than the report from the strata council, and did not have any further details of what occurred during the incident.

The Tenant provided testimony that the details as noted on the incident report do not make sense. He denies that the events occurred as stated on the incident report. The Tenant submitted that he did not initiate any physical contact with the security guard and did not use abusive or aggressive language.

The Tenant submitted a security camera photo into evidence and stated that the photo shows the security guard making physical contact with him. The Tenant also submitted into evidence a witness statement.

The letter from the witness states that they were present at the time of the incident on July 15, 2018. The statement further confirms that the Tenant was not physically or verbally abusive towards anyone present.

### Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the One Month Notice was sent by registered mail on September 21, 2018, and in the absence of any evidence confirming the actual date of receipt, I refer to the deeming provisions under Section 90 of the *Act*.

In accordance with Section 90, a document served by registered mail is deemed served on the 5<sup>th</sup> day after it is sent. As such, I find that the One Month Notice is deemed received by the Tenant on September 26, 2018.

As the Tenant applied to dispute the notice on October 4, 2018, I find that he applied within the timeframe provided under the *Act*. Therefore, the issue before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for ending the tenancy are valid.

The Tenant was not in agreement as to the events that occurred on July 15, 2018, as stated in the incident report from the strata corporation of the rental building. The Landlord was unsure of what occurred, other than what was stated in the incident report.

When two parties to a Dispute Resolution Proceeding are not in agreement as to what occurred, it is up to the party with the onus to submit evidence over and above their verbal testimony to establish their claim.

In the absence of witness statements or documentary evidence from the Landlord in addition to the incident report, I am not satisfied regarding the events that took place on July 15, 2018.

As the Tenant is disputing the details as stated in the incident report, I do not find that this documentary evidence, on its own, establishes that the events occurred as stated.

As I do not find that the Landlord met the burden of proof to prove, on a balance of probabilities, that the Tenant engaged in activity that caused significant disturbance or risk to other occupants or the Landlord, I find that that the One Month Notice cannot be upheld.

Therefore, the One Month Notice dated September 20, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As the Tenant was successful with his application, I award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment.

Conclusion

The One Month Notice dated September 20, 2018 is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 one time from the next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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 15, 2018

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Residential Tenancy Branch