



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

The tenant testified that she sent her notice of dispute resolution application, amendment to dispute resolution application and evidence package to the landlord via registered mail. The tenant did not recall on what date she sent the above listed packages. The landlord testified that she received the above listed packages on December 6, 2018. I find that the above packages were served in accordance with section 88 and 89 of the *Act*. The tenant filed for dispute resolution on November 24, 2018.

### Preliminary Issue- Late Service

The landlord submitted that the tenant's application should be dismissed because the tenant did not serve the landlord with the notice of dispute resolution proceeding within three days of the notice of dispute resolution proceeding being made available by the Residential Tenancy Branch.

The landlord testified that she had time to review and respond to the tenant's application for dispute resolution and the documents contained therein.

In determining whether the delay of a party serving their dispute resolution application on the other party should result in the application being dismissed, I must determine if allowing the hearing to proceed would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principles of natural justice as it applies to the service of the notice of dispute resolution are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the landlord testified that she had time to review and respond to the tenant's notice of dispute resolution package and documents contained therein. I find that the landlord was informed of the case against her and was able to review and respond to the notice of application and documents contained therein. I find that the landlord is not prejudiced by the continuation of this hearing and that this hearing will proceed on its merits.

#### Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 31, 2017 and is currently ongoing. Monthly rent in the amount of \$1,612.00 is payable on the first day of each month. A security deposit of \$750.00 and a pet damage deposit of \$300.00 were paid by the tenant to the landlord.

Both parties agreed that on November 20, 2018 the landlord personally served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of January 01, 2019 (the "One Month Notice").

The One Month Notice stated the following reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - put the landlord's property at significant risk.

Both parties agree to the following facts. The tenant allowed her child to play hockey on the deck of the subject rental property which caused damage to the wooden railing panels. One panel fell off and other panels were loosened, and the puck left numerous marks on the panels. Through e-mail communications in June of 2018, which were entered into evidence, the landlord requested that the tenant remove the hockey net from the deck and stop allowing her child to play hockey on the deck because it was damaging the subject rental property. The tenant initially agreed stop the hockey practice, fix the railing and re-paint it; however, as of early October 2018 the hockey net remained on the deck and the repairs were not made.

Both parties agree to the following facts. The landlord sent the tenant a letter dated October 17, 2018 via registered mail which was a formal request for the deck repairs to be completed by November 30, 2018. On October 26, 2018 the tenant e-mailed the landlord, that email stated that the missing deck panel had been re-attached and the loose boards had been secured; however, the painting of the deck railing would not be completed by November 30, 2018.

Both parties agree to the following facts. The landlord sent the tenant a letter dated November 16, 2018 by registered mail. The November 16, 2018 letter stated that the repairs requested in the October 17, 2018 letter had not been completed and that a hockey net was still located on the deck. The November 16, 2018 letter stated that if the tenant failed to paint the deck by January 1, 2019 and or there was continued evidence of hockey play occurring on the deck, the landlord would issue the tenant a One Month Notice to End Tenancy for Cause.

The tenant testified that she didn't paint the railing when the landlord asked her to as she didn't have the financial resources to do so. The tenant testified that she does plan on painting the deck railing before she vacates the subject rental property. The tenant testified that hockey play on the deck stopped after the October 17, 2018 letter; however she left a small hockey net on the deck because she didn't think the landlord should be able to tell her where to store her property.

### Analysis

Section 47(1)(d)(iii) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.

Based on the testimony and evidence of both parties I find that the damage to the deck railing did not put the landlord's property at significant risk, pursuant to section 47(1)(d)(iii) of the *Act*. The damage to the deck was not serious enough to meet the standard of section 47(1)(d)(iii) of the *Act*.

While the landlord was not successful in this application, I note that section 32(3) of the *Act* states that tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 47(1)(g) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time. Had the landlord chosen a different reason for issuing the One Month Notice on page two of the One Month Notice, she may have been successful in this application.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, in accordance with section 72 of the *Act*.

Section 72(2) states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

### Conclusion

I find that the One Month Notice is cancelled and of no force or effect. Pursuant to section 72(2), I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to 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: January 10, 2019

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Residential Tenancy Branch