



# 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 tenants' application pursuant to the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, J.D. attended the hearing. The tenant, L.W. did not attend the hearing. The tenant had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled hearing time for ten minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct participant code was provided to the landlord.

The tenant, J.D. testified that he served the landlord with the Notice of Hearing and Application for Dispute Resolution by regular Canada Post on March 8, 2019. Service by regular mail is not a permitted method of service of an application for dispute resolution pursuant to section 89 of the *Act*. However, the landlord has uploaded evidence to the Residential Tenancy Branch in response to this application. As such, I am satisfied that the landlord was aware of this application and I find the tenant has sufficiently served the landlord with the Notice of Hearing and Application for Dispute Resolution in accordance with section 71(2)(b). Since the tenant mailed the Notice of Hearing and Application for Dispute Resolution on March 8, 2019, I find that the landlord is deemed to have received the application five days later, being March 13, 2019 pursuant to section 90 of the *Act*.

Preliminary Matter: Admissibility of Landlord's Evidence

The tenant testified that he did not receive a copy of the landlord's evidence in advance of the hearing. *Residential Tenancy Branch Rules of Procedure*, sections 3.15 states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch seven days before the hearing. Based on the undisputed testimony of the tenant and the lack of any proof of service from the landlord, I find that the landlord did not serve her evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. I find that the admission of this evidence without service upon the tenant would prejudice the tenants and result in a breach of the principles of natural justice. Accordingly, landlord's undisclosed evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Issue(s) to be Decided

Are the tenants entitled to an order for the cancellation of the landlord's One Month Notice pursuant to section 47?

If not, is the landlord entitled to an order of possession pursuant to section 55?

Are the tenants entitled to reimbursement of their filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

The tenant testified that the tenancy commenced November 2017 with a monthly rent of \$1,200.00 and a \$600.00 security deposit. The tenant testified that landlord later increase the rent slightly. The tenant testified that he shares the rental unit with a co-tenant, J.W. and they each pay half of the rent payments.

The tenant testified that they received the landlord's One Month Notice on February 25, 2019. The notice states a move out date of March 31, 2019 and the stated reason to end the tenancy is repeated late payment of rent. The tenant disputes this notice.

Analysis

A tenant may dispute a One Month Notice pursuant to section 47(4) of the *Act*. Pursuant to *Residential Tenancy Branch Rules of Procedure*, Rule 6.6, the landlord has the onus

of proof to establish, on the balance of probabilities, that the notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

In the absence of any evidence or submission from the landlord, I find that the landlord has failed to satisfy her burden of proving the validity of the One Month Notice. Accordingly, I grant the tenants' application to cancel the landlord's One Month Notice pursuant to section 47(4) of the *Act*. The landlord's One Month Notice is hereby cancelled and it is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenants have prevailed in this matter, I grant the tenants' application for reimbursement of the \$100.00 filing fee pursuant to section 72 of the *Act*. To satisfy this monetary order, the tenants are authorized to deduct the sum of **\$100.00** from **ONE** future rent payment.

#### Conclusion

I grant the tenants' application to cancel the landlord's One Month Notice pursuant to section 47(4) of the *Act*. The landlord's One Month Notice is hereby cancelled and it is of no force or effect. This tenancy shall continue until it ends pursuant to the *Act*.

I grant the tenants' application for reimbursement of the \$100.00 filing fee pursuant to section 72 of the *Act* and the tenants are authorized to deduct the sum of **\$100.00** from **ONE** future rent payment.

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: April 26, 2019

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Residential Tenancy Branch