



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC FFT**

### Introduction

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

An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47; and

Authorization to recover the filing fees from the landlord pursuant to section 72.

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. The tenant was represented by his counsel, A.M. ("tenant"). The parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents and were prepared to deal with the matters of the applications.

### Issue(s) to be Decided

Should the Notice be upheld or cancelled?

Can the tenant recover the filing fee for this application?

### Background and Evidence

A copy of the tenancy agreement was provided as evidence by the tenant. This month to month tenancy began on April 1, 2015. Rent was set at \$500.00 per month and remains at \$500.00 per month at the time of this hearing. A security deposit of \$250.00 was collected and the landlord continues to hold it.

The landlord provided the following testimony. This is the third time she has tried to end the tenancy with the tenant. The previous two attempts at ending the tenancy were cancelled by the landlord as she wanted to "give the tenant a chance" and because she was trying to sell the property.

Over the last two months, the tenant has been harassing her with respect to TV, although the details were not provided in testimony. The landlord has been experiencing stress due to the tenant's behaviour leading her to issue the Notice to End Tenancy for Cause pursuant to section 47 of the *Act* on May 12, 2019. The effective

(move-out) date stated on the Notice is May 22, 2019. The reason for ending the tenancy on the form reads:

The 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.

A copy of the Notice issued pursuant to section 47 was provided as evidence by the tenant. On the form RTB-33 Notice to end Tenancy for Cause provided to the tenant, the landlord has used white-out and replaced 'One Month Notice' with '10 Day's Notice'.

The landlord testified her realtor advised her she could achieve an earlier end to the tenancy by altering the form to read 10 Day's Notice rather than One Month Notice. As English was her second language, she did not question her realtor's advice and proceeded to alter the form.

The tenant acknowledges receiving the altered form on May 12, 2019 by being personally served with it. He filed for dispute resolution on May 14, 2019.

#### Analysis

Section 47 of the *Act* describes when a landlord can end a tenancy for cause. Pursuant to section 47(2)

a notice under this section must end the tenancy effective on a date that is

- a) **not earlier than one month after the date the notice is received**, and
- b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. [emphasis added]

Section 55(1) of the *Act* reads:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- a) *the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- b) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

**52** In order to be effective, a notice to end 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) state the grounds for ending the tenancy, and

**e) when given by a landlord, be in the approved form**  
[emphasis added]

In the case before me, the landlord provided the tenant with a Notice that didn't comply with section 47(2) because the effective date was sooner than one month after the date of service of the Notice. The service date of the Notice was May 12, 2019 and the effective date was May 22, 2019. Rather than giving the tenant a full month's notice, the landlord gave him 10 days.

The Notice was also not compliant with section 52(e) in that the alterations made to the form were not approved. As the Notice to End Tenancy for Cause issued on May 12, 2019 is not in the approved form, it cannot be upheld. For these reasons, the Notice is cancelled and of no further force or effect. The tenancy shall continue until ended in accordance with the *Act*.

As the tenant's application was successful, the tenant is entitled to recover the \$100.00 filing fee from the landlord for the cost of this application.

### Conclusion

The One Month Notice to End Tenancy for Cause issued May 12, 2019 is cancelled and of no further force or effect.

The tenant is at liberty to deduct \$100.00 from a future payment of rent due to the landlord in accordance with section 72(2)(b) of the *Act*.

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: June 27, 2019

---

Residential Tenancy Branch