



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **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 (One Month Notice) pursuant to section 47 of the *Act*; and
- an Order for the landlord to comply with the *Act*, regulation, and/or tenancy agreement pursuant to section 62 of the *Act*.

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 landlord's agent T.J. attended on behalf of the corporate landlord and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenants testified that they served the landlord with the Notice of Dispute Resolution Proceeding package for this hearing and their evidence by Canada Post registered mail, which was confirmed received by the landlord. The landlord testified that the tenants were personally served with the landlord's evidence, which was confirmed received by the tenants.

Therefore, I find that the documents for this hearing were served in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue – Amendment to Tenant's Application

The tenants named the landlord's agent, instead of the corporate landlord, as the respondent in their Application. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenants' Application to correctly name the corporate landlord as the respondent in this matter.

### Procedural Matters

I explained to the parties 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

### Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

Are the tenants entitled to recover the cost of the filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence. The parties confirmed the following terms of the tenancy agreement:

- This tenancy began with tenant P.O. on November 1, 2010, and later tenant J.B. was added to the tenancy in October 2018.
- Current monthly rent of \$1,825.00 is payable on the first of the month.
- The tenants paid a security deposit of \$750.00 at the beginning of the tenancy, which continues to be held by the landlord.
- The rental unit consists of an apartment in a rental apartment building.

The tenants confirmed that the landlord personally served them with the One Month Notice dated September 17, 2019 on that same day. The tenants filed an Application for Dispute Resolution to dispute the notice on October 1, 2019, which is beyond the 10 days provided to dispute the notice in accordance with the *Act*. Further to this, the tenants failed to apply for a time extension to dispute the notice.

The tenants submitted a copy of the landlord's One Month Notice into evidence, which states an effective move-out date of October 31, 2019, with the following boxes checked off as the reasons for seeking an end to this 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.*
- *put the landlord's property at significant risk.*

I note that the landlord has not provided any of the particulars or details regarding these reasons to end tenancy in the "Details of Cause" section provided on the form. The landlord attached separate pages to the One Month Notice, consisting of the Addendum to the tenancy agreement pertaining to restrictions on cannabis production, smoking and vaping, and an information sheet about a tenant's responsibilities in serving a notice to end tenancy. The landlord explained that one of the reasons for issuing the notice to end tenancy was due to the fact that one of the co-tenants had given notice to end the tenancy and as such the landlord believed that the tenancy could be ended on this ground. I explained to the parties in the hearing that this is not a ground listed on the notice as it is not a ground available for ending a tenancy pursuant to section 47 of the *Act*, which is the section that sets out the only grounds for ending a tenancy on the basis of the One Month Notice.

Regarding the reasons for ending the tenancy selected on the One Month Notice, the landlord provided testimony that there had been two incidents, on August 2 and August 11, 2019 in which guests permitted on the rental property by the tenants were reported to the landlord by other residents in the building due to concerns about their activity. In the first case, the guest was sitting on the stairs and as a resident walked past, the resident noticed what they thought could be drug paraphernalia. The guest left and there was no further issues. In the second case, the guest, who appeared to be suffering from mental illness or some other issue, was placing pieces of tape on the walls in the lobby. When asked by a resident to leave, the guest complied, and the resident removed the pieces of tape. The landlord also referenced a statement by the tenants' former co-tenant who had told the landlord that "strange individuals" were often visiting at the rental unit.

The tenants testified that they had never been notified of any complaints pertaining to them or their guests.

### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenants acknowledged receipt of the landlord's One Month Notice on September 17, 2019. The tenants filed an application to dispute the notice on October 1, 2019, which is beyond ten days of receipt of the notice. Therefore, I find that the tenants have failed to apply to dispute the notice within the time limits provided by section 47 of the *Act*. As such, I dismiss the tenants' application to dispute the notice.

As I explained to the parties in the hearing, if a tenant's application to dispute a notice to end tenancy is dismissed, pursuant to section 55 of the *Act*, the landlord is entitled to an Order of Possession on the basis of the One Month Notice, if the notice is in the approved form and compliant with the other requirements set out in section 52 of the *Act*.

The approved form for a one month notice to end tenancy for cause includes the completion of a section entitled "Details of Cause" and indicates that the notice may be cancelled if details are not described. The landlord issuing the One Month Notice is required to provide the Details of Cause, explained on the notice as "dates, times, people or other information that says who, what, where and when caused the issue" pertaining to the reasons for ending the tenancy, to ensure that the tenant is clearly aware of the case being made against them, so that the tenant has a full and fair opportunity to prepare their evidence in order to dispute those claims, should they wish to.

In this matter, the landlord failed to provide any particulars regarding the "details of cause" for issuing the notice. The landlord attached separate pages to the One Month Notice, however, I find that the attached pages did not set out the Details of Cause pertaining to the reasons selected for ending the tenancy as there was no information provided about specific dates, times, people or circumstances related to the two incidents involving the tenants' guests which the landlord relied upon as the reasons for issuing the notice.

Therefore, based on the testimony presented, on a balance of probabilities, I find that the landlord failed to provide the required details of cause on the One Month Notice, and I find that the landlord failed to provide sufficient evidence to prove that the actions of the tenants' guests met the threshold for the reasons for ending the tenancy selected on the One Month Notice.

As such, the One Month Notice does not meet the requirements of section 52 of the *Act*, and is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

As the tenants' Application is dismissed, I find that the tenants are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

The tenants' Application to dispute the landlord's One Month Notice is dismissed due to failure to apply within the time limits under the *Act*.

The One Month Notice is cancelled and of no force or effect as the landlord failed to provide the tenants with the Details of Cause pertaining the reasons for issuing the notice.

This tenancy shall continue until it is ended in accordance with 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: November 06, 2019

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Residential Tenancy Branch