



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE HERITAGE  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FFT

### Introduction

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

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 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.

Landlord's agent R.R. (herein referred to as "the landlord") attended the hearing on behalf of the corporate landlord. The tenant attended with an advocate.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding package. The tenant confirmed receipt of the landlord's evidence.

I have considered only the documentary evidence submitted in accordance with the Residential Tenancy Branch Rules of Procedure. As such, I advised the tenant that her confidential medical documentary evidence submitted only to the Residential Tenancy Branch and not served on the landlord would not be considered for this hearing, although the tenant was provided the opportunity to give her verbal testimony on this evidence during the hearing.

Based on the undisputed testimonies of the parties, I find that both parties were served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*

and the Rules of Procedure with the exception of the tenant's confidential medical documentary evidence, as explained above.

As a procedural matter, I explained to both 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 Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained to both parties 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.

#### Preliminary Issue – Form and Content Requirements for the Notice to End Tenancy

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice. Further to this, in order for the landlord to obtain an Order of Possession, section 55 of the *Act* requires that the notice is on the approved form and compliant with section 52 of the *Act*.

Section 52 of the *Act* requires that:

In order to be effective, a notice to end a 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) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.**

**[My emphasis added]**

A copy of the One Month Notice was submitted into documentary evidence. I have reviewed the One Month Notice and I find that the notice does not comply with the form and content requirements of section 52 of the *Act* as the notice does not “state the effective date of the notice” as required by section 52(c) of the *Act*.

Further to this, the approved form for a One Month Notice to End Tenancy for Cause includes a section on page two entitled “Details of Cause”, which provides the following explanation regarding the required details to be provided:

*Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).*

In this matter, the landlord selected the reason for issuing the One Month Notice as:

*Tenant has allowed an unreasonable number of occupants in the unit/site.*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord issuing the One Month Notice is required to provide the details 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, such as the number of occupants in the rental unit, or who, what, where and when caused the significant interference and unreasonable disturbance. In the “Details of Cause” section, the landlord wrote:

*Confidential letters and videos will be shown to the authorities, as needed.*

The landlord attached a sheet to the One Month Notice, which provided the applicable sections of the tenancy agreement pertaining to additional occupants and conduct, however there were no details provided specific to the reasons for issuing the notice against the tenant.

Therefore, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord's One Month Notice dated September 30, 2019 failed to meet the form and content requirements of section 52 of the *Act*. I order that the One Month Notice is cancelled and of no force or effect.

As the tenant was successful in her application to cancel the One Month Notice, pursuant to section 72 of the *Act*, the tenant is entitled to recover the \$100.00 filing fee from the landlord. In place of a monetary award, the tenant may withhold \$100.00 from a future rent payment on ONE occasion.

This tenancy shall continue until it is ended in accordance with the *Act*.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the notice?  
Is the tenant entitled to recover the cost of the filing fee from the landlord?

Conclusion

The tenant was successful in her application to dispute the landlord's notice to end the tenancy. I order that the One Month Notice to End Tenancy for Cause dated September 30, 2019 is cancelled and this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on one occasion in satisfaction of the recovery of the filing fee.

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 08, 2019

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Residential Tenancy Branch