



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

On September 9, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act"), seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing seven minutes into the 20-minute hearing. The Landlord did not attend the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the concierge of the rental building. He stated that the Landlord owned the building and this person was her employee. He advised that he had proof of this service; however, he did not submit this as evidence. Based on the Tenant's solemnly affirmed, undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package.

The Tenant advised that he did not submit any evidence for consideration on this file.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Landlord's One Month Notice to End Tenancy for Cause, that his other claims would be dismissed, and that the Tenant is at liberty to apply for these claims under a new and separate Application.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral

and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note 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 complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's One Month Notice to End Tenancy for Cause dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the tenancy started in April or May of 2016 or 2017. Rent was currently established at \$480.00 per month, due on the first day of each month. A security deposit of \$187.50 was paid.

He advised that he was served the Notice on his door on September 1 or 2, 2019. A copy of this Notice was not submitted as documentary evidence.

#### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I find it important to note that the burden of proof is on the Landlord to substantiate the reasons for ending the tenancy. As the Landlord did not attend the hearing or provide evidence to justify why the Notice was served, I am not satisfied that the Landlord has established any grounds to justify service of the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

As the Tenant was successful in this application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause in relation to this Application to be cancelled and of no force or effect. This tenancy continues until 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 1, 2019

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Residential Tenancy Branch