



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants, filed under the Residential Tenancy Act (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on October 16, 2019, for a monetary order for loss or other money owed, and to recover the cost of the filing fee from the landlord.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary and procedural issues

In this case, the tenants have filed a monetary order that relates to the cost of preparing for this hearing and previous hearings. However, neither party are entitled to recover those costs. Therefore, I dismiss this portion of the tenants’ claim.

In this case, the tenants seek to recover eight months of rent, due to two previous notices to the tenancy, being issued under the Act. Simply because the landlord was not

successful with ending the tenancy, does not entitle the tenants not to pay rent, as those notices to end tenancy were issued in accordance with the Act. Therefore, I dismiss this portion of the tenants' claim.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began in June 2017. Rent in the amount of \$700.00 was payable on the first of each month. The tenants did not pay a security deposit or pet damage deposit.

The tenant acknowledged that when they moved into the rental unit it was based on two persons residing in the premise.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on November 30, 2019.

The reason stated in the Notice was that the tenants have:

- Assigned or sublet the rental unit without the consent of landlord.

The landlord testified that the tenants are living in the rental unit and they have allowed someone to live with them.

The tenant testified that it was the landlord's idea that they have someone move in with them, so the rent would be increased. The tenant stated that they did allow someone to move in with them; however, they did not pay anything additional for the occupant.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenants have:

- Assigned or sublet the rental unit without the consent of landlord.

In this case, the tenants have not assigned or sublet the rental unit as they are living in the premise. Although, I accept the tenants have an occupant that is living with them based on agreement that the rent would be increased. However, that is not the issue before me.

As the rental unit has not been assigned or sublet, I find the Notice must be cancelled and has no force or effect. Therefore, I grant the tenants' application to cancel the Notice. The tenancy will continue in accordance with the Act.

Since the tenants were successful with their application, I find the tenants are entitled to recover the cost of filing their application from the landlord. Therefore, I authorize the tenants a onetime rent reduction from January 2020 rent, in the amount of \$100.00 in full satisfaction of this award.

### Conclusion

The tenants' application to cancel the Notice is granted. The tenants are authorized a onetime rent reduction from January 2020, in the amount of \$100.00 to recover the cost 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: December 13, 2019

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Residential Tenancy Branch