



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OPTIMUM REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FFT

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated November 28, 2019 (1 Month Notice) and to recovery the cost of the filing fee.

An agent for the tenant SA (agent) attended the teleconference hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (Notice of Hearing), application and documentary evidence were considered. The agent provided a registered mail tracking number in evidence. The agent testified that the landlord was served with the Notice of Hearing, application and documentary evidence to the landlord's mailing address on December 9, 2019. A copy of the registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the Canada Post online registered website tracking website, the package was signed for and accepted on December 10, 2019. Based on the above, I am satisfied that the landlord was sufficiently served with the Notice of Hearing, application and documentary evidence as of December 10, 2019, which was the date the package was accepted at the post office.

### Preliminary and Procedural Matters

Firstly, pursuant to section 64(3)(c) of the Act, I amend the tenant's application from code CNE to CNC as the 1 Month Notice submitted in evidence is for Cause and not for End of Employment. I find this to be an obvious error, which I have the discretion to correct under the Act and I exercise my discretion accordingly.

In addition, the tenant confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them. As the landlord

did not have an email address listed in the application, the decision will be emailed to the landlord.

### Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of page one of the 1 Month Notice was submitted in evidence. The agent testified that page two of the 1 Month Notice listed one cause, which states:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The agent testified that the landlord has advised them of the strata assessing the owner with many fines related to smoking marijuana and the smell of marijuana. The agent testified that marijuana is not smoked or used and that they deny that it is coming from the rental unit and must be coming from one of the other 40 units.

The landlord failed to attend the hearing to present evidence to support the cause listed on the 1 Month Notice. The effective vacancy date listed on the 1 Month Notice is December 31, 2019, which has passed. The tenant continues to occupy the rental unit.

### Analysis

Based on the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Regarding the 1 Month Notice, as the landlord did not attend the hearing to present evidence to support the 1 Month Notice, I find the landlord has failed to prove that the 1 Month Notice was valid. As a result, **I cancel** the 1 Month Notice dated November 28, 2019.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

As the tenant's application had merit, I grant the tenant the recovery of the \$100.00 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **\$100.00** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee, pursuant to section 72 of the Act.

### Conclusion

The 1 Month Notice dated November 28, 2019 has been cancelled.

The tenancy has been ordered to continue until ended in accordance with the Act.

The tenant has been granted a one-time rent reduction of \$100.00 for the filing fee as noted above.

The decision will be emailed to the tenant and sent by regular mail to the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 3, 2020

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Residential Tenancy Branch