



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, FFT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order that the landlord's right to enter is suspended or restricted, pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant, the landlord and the owner of the subject rental property attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant served the landlord with his application for dispute resolution in person; however, neither party could recall on what date. I find that the tenant's application for dispute resolution was served on the landlord in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to an Order that the landlord's right to enter is suspended or restricted, pursuant to section 70 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. The landlord rents the subject rental property from the owner and subleases it to the tenant. The tenant moved in on May 15, 2018 and continues to reside at the subject rental property. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month.

The landlord testified that on December 2, 2019 he personally served the tenant with a One Month Notice to End Tenancy for Cause (the "One Month Notice"). Neither party was certain what the effective date of the One Month Notice was. The tenant confirmed receipt of the One Month Notice on December 2, 2019. The One Month Notice was not entered into evidence. The only document entered into evidence by the parties was a photograph of a sticky note with a police file number written on it.

The landlord testified that the tenant was late paying rent in February, May, August, September and December 2019. The tenant denied paying rent late in December 2019 and testified that he did not remember being late for the other months. The owner testified that the tenant was late on several occasions.

The landlord testified that the tenant sublet the subject rental property without his consent. The tenant testified that he did not sublet the subject rental property, but his roommate occasionally changed and that in any event, the landlord approved this arrangement at the beginning of this tenancy. The landlord disputed agreeing to allow the tenants roommate to change.

The tenant testified that the landlord frequently attends at the subject rental property without notice and borrows his tools and other items without asking. The tenant testified that he wants 24 hours' notice of the landlord's attendance at the subject rental property.

The landlord testified that he and the tenant were friends and they each borrowed items from the other and that they have not historically required the other to ask permission.

### Analysis

Section 47(1)(b) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Section 47(1)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*].

The One Month Notice was not entered into evidence. I cannot cancel a notice to end tenancy that is not before me. I therefore dismiss the tenant's application to cancel the One Month Notice, without leave to reapply.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Since a One Month Notice was not entered into evidence, I find that I cannot determine if it conforms with the form and content requirements of section 52 of the *Act*. I therefore find that I cannot issue the landlord an Order of Possession under section 55 of the *Act*.

Section 29(1) of the *Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Based on the testimony of both parties, I find that the landlord attends at the subject rental property without providing the tenant with 24 hours' notice, contrary to section 29 of the *Act*. While the relationship between the landlord and the tenant may have historically been such that the tenant waived the landlord's requirement to provide 24 hours' notice of entry, it is clear that the relationship has changed and the tenant no longer waives the requirements of section 29 of the *Act*.

Pursuant to section 62 of the *Act*, I order the landlord to comply with section 29 of the *Act*.

As the tenant was successful in a portion of his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

### Conclusion

The tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

The landlord is ordered to comply with section 29 of the *Act*.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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: February 06, 2020

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Residential Tenancy Branch