



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, CNC, OLC, FFT

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause, orders for the landlord to make repairs and comply with the Act, regulations or tenancy agreement. All named parties appeared for the hearing.

### Preliminary and Procedural Matters

At the outset of the hearing, I explored service of hearing documents upon each other. The tenants testified that they combined the proceeding package and their evidence and served it upon the landlord, in person, within three days of filing. The landlord testified that she served the tenants with her response and evidence in person, on two occasions, with her brother present as a witness and the most recent service took place on or about March 28, 2020.

In making submissions as to service of evidence upon the tenants, the landlord stated the tenants have since moved out of the rental unit.

I turned to the tenants and asked them when they moved out. The tenant testified that the tenancy ended on March 31, 2020 but that they had movers remove most of their possessions on April 1, 2020 and after cleaning up they returned the keys to the landlord on April 4, 2020. The landlord confirmed that she has regained possession of the rental unit from the tenants and she does not require an Order of Possession.

Since the tenants have already vacated the rental unit, I informed the parties that the remedies sought by the tenants were now moot. Where a tenant disputes a Notice to End Tenancy and the Arbitrator determines the Notice is without merit the Notice will be cancelled and the tenancy will continue. Where an Arbitrator determines the Notice had

merit and upholds the Notice the landlord is provided an Order of Possession by the Arbitrator. In this case, the tenants have already vacated the rental unit, which in itself brings the tenancy to an end under section 44(1)(d) of the Act, and the landlord has already regained possession of the rental unit. As such, it is unnecessary to determine whether the 1 Month Notice should be cancelled or upheld as the tenancy has ended in any event and the landlord has already regained possession.

The tenants requested that I proceed to hear their evidence and make a determination that the subject 1 Month notice was without merit and was part of landlord's efforts to harass them. The tenants explained that they decided to move out of the rental unit for health reasons, not because of the 1 Month Notice, and they seek such a determination so that their tenancy record does not reflect an eviction and because they have launched a monetary claim against the landlord which is set for hearing in August 2020. I informed the tenants that I am unaware of tenancy record or registry that would reflect an "eviction" other than the Residential Tenancy Branch's internet case management system used to manage the disputes that are filed and I asked the tenant to describe the record to which they are referring to which the tenants stated they were unfamiliar with any such record. As for the tenants' intention to pursue the landlord for monetary compensation for harassment, I informed the tenants that it will be upon the tenants to satisfy the Arbitrator assigned to hear that Application in August 2020 as there is no monetary claim before me to decide.

As a courtesy to the tenants, I have recorded in this decision that the tenants where of the position the landlord did not have a basis to issue the 1 Month Notice; however, I note that both parties had submitted evidence in an apparent attempt to support their respective positions prior to this hearing but I have not reviewed the evidence and I do not make no finding as to whether there was basis for issuance of the 1 Month Notice as it is unnecessary to do so.

The tenants had requested recovery of the filing fee in making this Application for Dispute Resolution. The landlord stated that she was not agreeable to compensating the tenants for recovery of the \$100.00 filing fee.

An award for recovery of a filing fee is provided under section 72(1) of the Act. Section 72(1) provides as follows:

**Director's orders: fees and monetary orders**

**72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

[My emphasis underlined]

As seen in section 72(1), the award for recovery of the filing fee is at my discretion, as evidenced by the word “may” which I have underlined above. Having heard the tenants decided to end the tenancy for their own reasons but filed this Application for Dispute Resolution to preserve their “record” which they could not demonstrate exists or would harm them, I am of the view this Application for Dispute Resolution was largely at their discretion and unnecessary. Therefore, I make no award for recovery of the filing fee.

Conclusion

The tenants have already vacated the rental unit and the remedies sought by the tenants under this Application for Dispute Resolution are moot. I make no award for 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: April 22, 2020

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Residential Tenancy Branch