



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, RP, LRE, OLC, FFT

### Introduction

On June 29, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 65 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 65 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with his daughter T.W. attending as his advocate. The Landlord attended the hearing as well. All parties provided a solemn affirmation.

T.W. advised that the Notice of Hearing package was served by registered mail to the Landlord on July 3, 2020 and he confirmed receiving this package. He stated that the Tenant made the Application on June 29, 2020, so by serving the Notice of Hearing package on July 3, 2020, this did not meet the timeframe requirements for service under Rule 3.1 of the Rules of Procedure.

As the Landlord was advised during the hearing, despite the Tenant applying on June 29, 2020, the Notice of Hearing package was provided to the Tenant on June 30, 2020. Rule 3.1. states that this package must be served “within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch.” As I am satisfied that this package was served in accordance with Rule 3.1 and Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served with the Notice of Hearing package.

T.W. advised that some evidence was included in the Notice of Hearing package and some evidence was served to the Landlord on July 15, 2020 by hand. The Landlord confirmed that he received this evidence and that he was prepared to respond to it. As such, I have accepted all of the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised his evidence was served to T.W. by hand on July 15, 2020 because it was easier to serve T.W. and the Tenant agreed that he was fine with these documents being served to her. T.W. confirmed that she received these documents then. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

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 he is at liberty to apply for these claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral 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 Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

### Background and Evidence

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.

All parties agreed that the tenancy started on October 1, 2018, that rent was currently \$1,800.00 per month, and that it was due on the first day of each month. A security deposit of \$900.00 and a pet damage deposit of \$900.00 were also paid. A signed copy of the tenancy agreement was submitted as documentary evidence for consideration.

The Landlord advised that he did not serve a One Month Notice to End Tenancy for Cause. He stated that the Tenant emailed him multiple times suggesting dates that he would end the tenancy; however, he never received a written notice to end the tenancy from the Tenant that complied with the *Act*. Furthermore, a Mutual Agreement to End Tenancy was never signed by the parties.

The Tenant acknowledged that he was never served a One Month Notice to End Tenancy for Cause by the Landlord and that he has never given any written notice to end his tenancy that complied with the *Act*.

T.W. advised that the reason the Tenant made this Application to dispute a One Month Notice to End Tenancy for Cause is because the Landlord wrote a letter to the Tenant that appeared to be notification to the Tenant that the tenancy would be ending.

### 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.

Section 44 of the *Act* outlines all the manners with which a tenancy can end, and they are listed as follows:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 45 of the *Act* outlines how a Tenant can end a tenancy and it states that:

**45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* below outlines what is required in terms of the form and content of a notice to end a tenancy.

**52** In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

When reviewing the totality of the evidence before me, the letter that the Landlord served to the Tenant clearly does not comply with the *Act* and does not constitute a valid manner with which to end a tenancy. Therefore, there is no One Month Notice to End Tenancy for Cause to dispute. Furthermore, the Tenant has not served the Landlord with a notice to end tenancy that complies with the *Act*. Ultimately, I find that this tenancy continues as normal until ended in accordance with the *Act*.

As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on the above, a One Month Notice to End Tenancy for Cause was never served to the Tenant, nor has the Tenant served his notice to end the tenancy. Consequently, the 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: July 24, 2020

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Residential Tenancy Branch