



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 09, 2020 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated June 27, 2020 (the “Notice”);
- To suspend or set conditions on the Landlords’ right to enter the rental unit;
- For compensation for monetary loss or other money owed; and
- For reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlords appeared at the hearing with S.B. to assist. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure, I told the Tenant I would hear the dispute of the Notice and request for the filing fee and dismiss the remaining requests as they are not sufficiently related to the dispute of the Notice. The requests to suspend or set conditions on the Landlords’ right to enter the rental unit and for compensation for monetary loss or other money owed are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

S.B. confirmed the Landlords received the hearing package. The Landlords had not received the Tenant’s evidence. However, S.B. agreed this was not an issue given the nature of the evidence and documents submitted.

I went over the relevant evidence submitted by the Landlords and the Tenant confirmed receipt of the relevant evidence. The Tenant had not received an August 06, 2020 letter from R.B.; however, I have not relied on this in my decision.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

I note that I had to mute the Tenant near the end of the hearing as I had told both parties to stop speaking while I provided information and the Tenant continued to speak and interrupt me. I muted the Tenant so I could provide the information to the parties. I then unmuted the Tenant for the final part of the hearing when I allowed both parties to ask final questions before concluding. I note that the Tenant again had to be told not to interrupt me and S.B. while I was answering S.B.'s question.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, are the Landlords entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started January 15, 2020. Rent is \$1,350.00 per month due on the first day of each month.

The first page of the Notice was submitted as evidence. It is dated June 27, 2020 with an effective date of July 27, 2020.

The second and third pages of the Notice were not submitted. S.B. testified that the ground for the Notice is that the Tenant is repeatedly late paying rent. S.B. testified that the Notice is based on April, May, June and August rent being paid late.

S.B. testified that the Notice was posted to the door of the rental unit June 27, 2020. The Tenant testified that he received the Notice June 28, 2020 posted to the door of the rental unit.

### Analysis

The Notice was issued pursuant to section 47(1)(b) of the *Act*.

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*.

The Tenant testified that he received the Notice June 28, 2020. The Tenant had until July 08, 2020 to dispute the Notice. The Tenant filed the Application July 09, 2020, past the deadline for disputing the Notice.

At the hearing the Tenant took the position that the Notice was deemed received three days after it was posted to the door of the rental unit and therefore the dispute was not late. This is not accurate. When a document is received earlier than it would have been deemed received pursuant to section 90 of the *Act*, the date it was actually received is the received date for the purposes of section 47(4) of the *Act* (see Policy Guideline 12).

Given the Application was not filed on time, and the Tenant did not seek more time to file the Application or provide a valid reason for having filed late, I dismiss the dispute of the Notice without leave to re-apply as section 47(5) of the *Act* applies.

Section 55 of the *Act* states:

55 (1) 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.

I have dismissed the dispute of the Notice. However, I decline to issue the Landlords an Order of Possession based on the Notice.

S.B. testified that the Notice was issued for late payment of rent in April, May and June. On June 24, 2020, Ministerial Order No. M195 was issued. Section 3(2) of the Order states:

(2) A landlord must not give a tenant notice to end a tenancy under section 47 (1)...of the Residential Tenancy Act in respect of a reason that relates to the affected rent being unpaid, including one or more of the following reasons:

(a) one or more payments of the affected rent are late...

“Affected rent” means rent due from March 18, 2020 to present as stated in section 1 of the Order.

The Notice was issued in relation to affected rent as it relates to rent due from April to June. The Landlords were not permitted to serve the Notice. Given this, I find the Notice should not have been issued in the first place and is not a valid notice to end tenancy. I therefore cancel the Notice and decline to issue an Order of Possession based on it.

Given the Tenant was ultimately successful on the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from one future rent payment.

### Conclusion

The Notice is cancelled. The Tenant can deduct \$100.00 from one future rent payment as reimbursement for 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 *Act*.

Dated: August 13, 2020

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Residential Tenancy Branch