



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”); and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application 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 is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord and the Landlord’s adult child who acted as an agent and interpreter for them (the “Agent”). All parties provided affirmed testimony. The Landlord acknowledged receipt of the Application and the Notice of Hearing and both parties acknowledged receipt of each other’s documentary evidence by email. Neither party raised concerns about the service of the Application and Notice of Hearing or the documentary evidence before me. As a result, I find that the Landlord was served with a copy of the Application and the Notice of Hearing and that both parties were served each other’s documentary evidence as required by the *Act* and the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

While I have considered the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. Only the relevant

and determinative aspects of the claims, evidence, and my findings of fact are set out below.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

### Preliminary Matters

#### Preliminary Matter #1

During affirmations, the Tenant stated that the Agent had not properly translated the affirmation wording to the Landlord, and therefore the Landlord had not actually promised to tell the truth in the hearing. The Agent re-translated the affirmation and I am satisfied that the Landlord was aware of the requirement to provide truthful testimony during the hearing and that they promised to do so.

#### Preliminary Matter #2

Neither party speaks English as a first language and although the Tenant was able to understand and communicate in English during the hearing, the Landlord's Agent was present with them to interpreter for them and to act on their behalf. The Tenant, the Landlord, and the Agent all speak and understand Mandarin. During the hearing the Tenant stated that they overheard the Landlord telling the Agent in Mandarin that they were going to cut off the utilities to the rental unit. I advised the Landlord and the Agent in the hearing that they must abide by the *Act*, the regulations, and the tenancy agreement in all dealings with the Tenant and in relation to services and facilities agreed upon in the tenancy agreement. I encouraged the Landlord and Agent to review the legislation, the Branch website, and the Residential Tenancy Policy Guidelines and/or speak with an information officer with the Branch prior to taking any action in relation to the tenancy or restricting or discontinuing any services or facilities, and advised them that breaching the *Act*, regulation, or the tenancy agreement may result in monetary and other claims against them from the Tenant.

The Landlord is also cautioned that failing to comply with the *Act*, regulations, the tenancy agreement, or decisions and orders from the Branch, may result in administrative penalties under the *Act*.

### Preliminary Matter #3

During the hearing the parties acknowledged that they routinely served documents on each other and communicated in relation to the tenancy by email as the Landlord does not reside in Canada. I advised the parties that although section 71 (2) (b) and (c) allows arbitrators to find that documents not served in accordance with sections 88 and 89 of the *Act* are sufficiently served, I encouraged the parties to review these sections of the *Act* and cautioned them that failing to serve documents in accordance with sections 88 and 89 of the *Act* could result in future service issues, should either party take issue with this manner of service or allege that documents were not received.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession for the rental unit pursuant to section 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

There was no dispute between the parties that a tenancy under the *Act* exists between the Landlord and Tenant.

The Agent stated that a One Month Notice was served on the Tenant by email on June 6, 2020, as a result of late payment of rent and disturbances to the neighbours, among other things. The Tenant acknowledged receipt of the One Month Notice on or about June 6, 2020, and stated that they take no issue with service by email as they received the One Month Notice, and this is a regular method of communication between themselves and the Landlord.

Neither copy of the One Month Notice submitted by the Tenant and the Landlord contain a signature and the Agent stated that the One Month Notice was not signed as it was both completed and sent to the Tenant electronically.

### Analysis

Based on the testimony of the parties in the hearing, and pursuant to section 71 (2) (c) of the *Act* I am satisfied that the Tenant was sufficiently served with the One Month Notice by email on June 6, 2020. Having made this finding, I will now turn to the validity of the One Month Notice.

Section 52 of the *Act* states that 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.

Although both copies of the One Month Notice in the documentary evidence before me are in writing on the approved form, contain a date for completion of the form and the address for the rental unit, as well as an effective date and the grounds for ending the tenancy, neither form is signed by either the Landlord or an agent acting on their behalf.

During the hearing the parties also confirmed that no signed copy was sent to or received by the Tenant. As a result, I find that the One Month Notice does not comply with section 52 of the *Act* and I therefore order that it is cancelled.

Based on the above, I also order that the tenancy continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

As the Tenant was successful in their Application, I authorize them to withhold \$100.00 from the next months rent payable under the tenancy in recovery of the filing fee, pursuant to sections 72 (1) and 72 (2) (a) of the *Act*.

Conclusion

The Once Month Notice is cancelled, and I order that the tenancy therefore continue in full force and effect until it is ended by one of the parties in accordance with the *Act*.

The Tenant is authorized to withhold \$100.00 from the next months rent payable under the tenancy in recovery of the filing fee, pursuant to sections 72 (1) and 72 (2) (a) of 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: August 18, 2020

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Residential Tenancy Branch