



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

In this dispute, the tenants seek an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the filing fee under section 72 of the Act.

The tenants filed an application for dispute resolution on July 13, 2020 and a dispute resolution hearing was held, by teleconference, on August 18, 2020. A tenant, a translator for the tenant, and the landlord’s agent attended the hearing and were given an opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

The tenant testified that she served copies of their evidence on the landlord. The landlord’s agent testified that he served a photograph on the tenant; the tenant stated that she never received the photograph. The landlord’s agent also submitted a URL link to video of the interior of the rental unit; he admitted this was not sent to the tenants.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Finally, I note that section 55 of the Act requires that when a tenant applies 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’s notice to end tenancy complies with the Act.

### Issues

1. Are the tenants entitled to cancel the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on March 1, 2019 and monthly rent is \$5,500.00. The tenants paid a security deposit of \$2,750.00. A copy of the written tenancy agreement was submitted into evidence.

I note that on page one of the tenancy agreement, next to the names of the tenants, is a handwritten notation that states “(etc. Ten Peoples)” which is initialled by one of the tenants, but not the landlord.

The house (referred to as the “rental unit”) is a 5,266 ft<sup>2</sup> house with 5 bedrooms, 4 full bathrooms, and 1 half bathroom.

In regard to the Notice, the landlord’s agent testified that he served the tenants with the Notice on July 11, 2020 by leaving the Notice in the mailbox. A copy of the Notice was tendered into evidence. The agent further testified that the Notice was issued because, when a realtor took a video of the interior of the house (the landlord is in the process of trying to sell the property), it was discovered that there were 8 or 9 people living in the rental unit. There were mattresses everywhere and in the living room. The people appeared to be students from China and local.

The landlord’s agent further commented that “I don’t think they are just roommates.” He did not know if the tenants were living there, and he was not sure what the tenants were charging the students for living there.

The tenant, through her translator, testified that there are more rooms than just the bedrooms, and that there are many additional rooms for people to stay in. She said that she lives in the house (her co-tenant is currently in China, hoping to return in the fall).

Further, the tenant referred me to the “10 occupant” notation in the tenancy agreement, adding that the property is over 5,000 square feet, and thus it is not unreasonable for 8 or 9 people to be living there.

Given that the photograph and video link submitted by the landlord’s agent were not served on the tenants, I will not consider this evidence in making a ruling on this dispute.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Notice was issued under section 47(1)(c) of the Act, which states that

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: [...] (c) there are an unreasonable number of occupants in a rental unit;

There is also a standard clause in the tenancy agreement (11. 3) that references the unreasonable number of occupants restriction. And, while there is a notation on page 1 of the tenancy agreement that refers to a ten-person maximum, this notation is not initialled by the landlord and as such I cannot find that it is a valid term of the agreement. The landlord's agent was silent on this particular fact, so I make no further finding of fact or law as to the efficacy of the statement. That said, this finding will have little bearing on the outcome of this dispute.

In this dispute, the landlord alleges that the 8 or 9 persons occupying the rental unit is unreasonable. He noted that there are mattresses everywhere, and that, this number of people in a 5-bedroom house is unreasonable.

What is completely missing from the landlord's agent's submissions, however, is any explanation or argument as to why, or how, 8 or 9 people is an unreasonable number of occupants in the rental unit. It is not simply enough to say that X number of people in a rental unit is unreasonable: the onus is on the landlord to prove *why* a specific number of people is unreasonable. This was not explained in the landlord's case.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that there are an unreasonable number of occupants in the rental unit.

Given the above, I order that the Notice issued on July 11, 2020 is hereby cancelled. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance and in compliance with the Act.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were successful in their application, I grant their claim for reimbursement of the \$100.00 filing fee.

In full satisfaction of this claim the tenants may make a one time \$100.00 deduction from their rent for September or October 2020.

### Conclusion

I HEREBY ORDER THAT:

1. the One Month Notice to End Tenancy for Cause, issued July 11, 2020, is cancelled. The Notice is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act; and,
2. the tenants may deduct \$100.00 from the rent for September 2020 or October 2020.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 18, 2020

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Residential Tenancy Branch