



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal LePage Merritt Real Estate services  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL-4M, OLC  
                              CNC, FFT

### Introduction

The tenant and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

This hearing dealt with two tenant applications pursuant to the *Residential Tenancy Act* (the *Act*). The tenant's first application is for:

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, pursuant to section 49; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The tenant testified that this application was not served on the landlord. Both parties agree that the landlord cancelled the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. The tenant's first application is dismissed with leave to reapply for failure to serve the landlord. I will not consider if the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* because the agent testified that the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit was cancelled.

The tenant's second application is for

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- recovery of the filing fee from the landlord, pursuant to section 72.

The tenant testified that the second application was served on the landlord via registered mail on March 18, 2021. The landlord confirmed service but could not recall on what date. I find that the landlord was served with the tenant's second application for dispute resolution in accordance with section 89 of the *Act*.

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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47 of the *Act*?
2. Is the tenant entitled to recover the filing fee from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application to cancel the One Month Notice is dismissed or the landlord's One Month Notice is upheld, and the One Month Notice complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began approximately 10 years ago and is currently ongoing. Monthly rent in the amount of \$674.96 is payable on the first day of each month. A security deposit of \$300.00 was paid by the tenant to the landlord. The subject rental property is a two-bedroom apartment.

The agent testified that he did not recall when the One Month Notice was served on the tenant. The agent testified that it was posted on the tenant's door. The tenant testified that he received the One Month Notice but could not recall when. The One Month Notice is dated March 3, 2021 and the tenant filed to cancel it on March 12, 2021. The One Month Notice states the following reason for ending the tenancy:

- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The One Month Notice is on a Residential Tenancy Branch form from 2011 and does not have a details of cause section.

The agent testified that the new owner of the subject rental property learned that someone lives with the tenant in the subject rental property. The agent testified that the tenant did not have written consent to sublet. The new owner believed that the rent was too low for two people to live in the subject rental property and so asked the agent to serve the tenant with the One Month Notice for subletting without written consent.

The tenant testified that he has had a roommate for the entire duration of this tenancy and it has never been an issue.

### Analysis

I find that the One Month Notice was served on the tenant in accordance with section 88 of the *Act*.

Section 47(1)(i) of the *Act* states:

**47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

Residential Tenancy Policy Guideline #19 states:

The use of the word 'sublet' can cause confusion because under the Act it refers to the situation where the original tenant moves out of the rental unit, granting exclusive occupancy to a subtenant, pursuant to a sublease agreement.

I find that the tenant has not sublet the subject rental property because the tenant did not move out. The relationship between the tenant and the third party is that of roommates. As the tenant has not sublet the subject rental property, I cancel the One Month Notice because the landlord has not proved the reason to end the tenancy as set out in the One Month Notice.

In the landlord's evidence the landlord quotes the following portion of Policy Guideline #19 in support of the One Month Notice:

Example: John's original tenancy agreement with the landlord contained a term that he and the landlord agreed that John would not allow other occupants to move into the rental unit without first obtaining the landlord's written consent. When Susan asked John if she could stay longer as a roommate, John didn't talk to the landlord and get his written consent to have a roommate. Upon discovering the situation, the landlord issued a One Month Notice to End Tenancy (form RTB-33) for a breach of a material term, i.e. John got a roommate without first obtaining the landlord's consent. John challenges the notice but at the hearing, an arbitrator determines that the term of the tenancy agreement was enforceable and upholds the notice to end tenancy.

I note that in the above example, the landlord served the One Month Notice on the tenant for breach of material term, not for subletting without written consent. The landlord did not select the breach of material term box on 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.

I find that the One Month Notice served by the landlord is not in the approved form, contrary to section 52(e) of the *Act*. The One Month Notice is on an old RTB form one

decade out of date. For this additional reason, the One Month Notice is cancelled. Updated RTB forms are easily found on the RTB website. The landlord is cautioned to make sure all forms used are up to date.

As the tenant was successful in this application for dispute resolution the tenant is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*. Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

### Conclusion

The One Month Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00 on one occasion from rent due to the landlord.

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: May 18, 2021

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Residential Tenancy Branch