



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT  
                             OPC, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenant’s Application for Dispute Resolution was made on January 4, 2021. The Tenant applied to cancel a One-Month Notice to End Tenancy for Cause (the “Notice”) issued on January 28, 2021, and to recover the filing fee paid for this application.

The Landlord’s Application for Dispute Resolution was made on February 9, 2021. The Landlord applied for an order of possession to enforce a One-Month Notice to End Tenancy for Cause (the Notice) issued on January 28, 2021, and to recover the filing fee paid for this application.

Two Agents for the Landlord (the “Landlord”), the Tenant, the Tenant’s son and daughter, and the Tenant’s Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Should the Notice to End Tenancy issued January 28, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Is the Landlord entitled to the return of their filing fee?
- Is the Tenant entitled to the return of their filing fee?

### Background and Evidence

The tenancy agreement records that this tenancy began on November 1, 2016, as a month-to-month tenancy. The current rent in the amount of \$1,156.00 is to be paid by the first day of each month, and that the Tenant paid the Landlord a \$550.00 security deposit. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to the Tenant on January 28, 2021, by personally serving it to the Tenant. The Notice has an effective date of March 1, 2021. The Landlord submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant or a person permitted on the property by the tenant has:*
  - *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
  - *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

The Landlord testified that the Tenant keeps closing the fire door in the hallway leading to their rental unit. The Landlord testified that when the Tenant closes this door, the heat builds up in the hallway causes the building fire alarm to go off, which causes the building to be evacuated and the fire department to be called. The Landlord testified that the action of the Tenant closing the door had caused five fire alarm instances in the last

year. When asked to provide dates of the incidents, the Landlord was unable to provide the requested information.

The Landlord testified that the fire door is connected to the building fire alarm and equipped with a "Hold-Open device that auto closes when the fire alarm is activated. The Landlord testified that this system is approved by the fire department and that the door is to remain open at all times until triggered by an alarm to close.

The Landlord testified that the Tenant was given a warning letter about this, telling them to stop closing the fire door On November 5, 2019. A copy of a warning letter was submitted into documentary evidence.

The Landlord testified that the Tenant continues to close the door after receiving the warning letter and after they have posted a notice on the door advising that it must be left open.

The Tenant testified that they had closed the door in the past, thinking that they had the right to do so and that they were closing the door due to the hallway being too cold.

The Tenant testified that they have never received a warning letter about the fire door from the Landlord but that since the Landlord put a notice on the door to leave it open, they have not closed the door.

Both parties agreed that the fire door is in a common area of the building.

The Landlord also testified that the Tenant had gotten into an argument with their neighbours regarding the fire door in 2019 but that they had taken no action to end the Tenant's tenancy due to that incident when it happened.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on January 28, 2021. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until February 7, 2021, to file their application to dispute the Notice. The Tenant filed their application on February 4, 2020, within the statutory time limit.

This is the case the Landlord is seeking to end this tenancy due to this Tenant repeatedly closing a fire door after the Landlord had advised them that the door was to remain open.

During these proceedings, the parties offered conflicting verbal testimony regarding the issuance of a warning letter to the Tenant to stop closing this fire door. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, it is the Landlord to hold the burden of proof regarding their Notice to end the tenancy.

I have reviewed the documentary evidence submitted by the Landlord to support their Notice, and I find that there is insufficient evidence to satisfy me, that the Tenant had been served with a warning letter or that the Tenant had closed this fire door after a Notice was placed on the door that it be left open. Therefore, I find the Landlord has failed to meet the onus to establish their claim on this point.

Conclusively, I find that the Landlord has not proven sufficient cause, to satisfy me, to terminate the tenancy for the reasons indicated on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice dated January 28, 2021, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

The Tenant was verbally cautioned during these proceedings, that they do not have the right to close the fire door in the common area leading to their rental unit, and that any future action of closing this door can be deemed a breach of their tenancy agreement and the *Act* and may result in sufficient grounds to end their tenancy. The Tenant acknowledged understanding of this caution during these proceedings.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Tenant to take a one-time deduction of \$100.00, from their next month's rent in full satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice, dated January 28, 2021, is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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 4, 2021

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Residential Tenancy Branch