



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

On April 7, 2021, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, with A.K. attending as their advocate. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

A.K. advised that the Landlord was served the Notice of Hearing and evidence package by registered mail on April 16, 2021 and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served the Notice of Hearing and evidence package. As such, I have accepted this evidence submitted and will consider it when rendering this Decision.

The Landlord advised that she served the Tenants with her evidence by email on May 13, 2021. A.K. confirmed that the Tenants received this evidence, and she had no position with respect to the manner with which this was served. As such, I have accepted this evidence submitted and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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 and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of the filing fee?

#### Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2019, that rent was currently established at \$950.00 per month, and that it was due on the first of each month. A security deposit of \$475.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Tenants were served a signed copy of the Notice by posting it to the Tenants' door on March 31, 2021; however, she did not have any proof

of service to corroborate this. She also advised that she served a copy of this Notice to the Tenants by email that same day. A.K. advised that the Tenants never received this Notice on the door, but they did get it via email on March 31, 2021. All parties agreed that the Notice received by email was not signed by the Landlord.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenants on March 31, 2021, I find it important to note that there is no documentary evidence before me to confirm that the Landlord served a signed copy of this Notice on the Tenants' door on March 31, 2021. As such, I can only rely on a copy of the Notice that was confirmed received by email on March 31, 2021.

However, I have reviewed this Notice, that was served by email, to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. As both parties confirmed that the Landlord did not sign the Notice served by email, I am not satisfied of the validity of the Notice as it does not comply with Section 52 of the *Act*. Therefore, I find that the Notice of March 31, 2021 is of no force and effect.

As the Tenants were successful in this Application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application. As such, the Tenants are permitted to withhold this amount from the next month's rent to satisfy this debt.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for

Cause of March 31, 2021 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. The Tenants are also allowed to withhold the \$100.00 filing fee from the 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: July 29, 2021

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Residential Tenancy Branch