



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on May 3, 2021, in which the Tenant sought an Order canceling a 1 Month Notice to End Tenancy for Cause, issued on April 29, 2021 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement.

The hearing of the Tenants' Application was scheduled for 11:00 a.m. on September 9, 2021. Only the Tenant, L.H., and the occupants, V.H. and E.M., called into the hearing. The Tenant and V.H. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 11:13 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant, V.H. and E.M. and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant's daughter, V.H., testified that she served the Landlord in person on May 17, 2021 with the Notice of Hearing and the Application. She further testified that this service was witnessed by her boyfriend V.D. I accept V.H.'s testimony in this respect and find the Landlord was duly served as of and I proceeded with the hearing in their absence.

Those in attendance were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. They confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and V.H. and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Tenant named her daughter and three other occupants as Tenants. A review of the tenancy agreement confirms the Tenant, L.H. is the only named Tenant. I therefore Amend the Tenant's Application to remove the occupants as Tenants on the Application.

#### Preliminary Matter

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, as the Landlord failed to call into the hearing, and failed to provide any testimony or evidence in support of the Notice, I grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

Although I have cancelled the Notice due to the Landlord's failure to attend the hearing, I note that I would have cancelled the Notice in any event for the following reasons. The reasons cited on the Notice were that the Tenant has allowed an unreasonable number

of *occupants* in a rental unit. This Notice was issued pursuant to section 47(1)(b) which reads as follows:

**47** (1) 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;

[emphasis added in bold italics]

The use of the word *occupant* in section 47 and the Notice means a person who occupies the rental unit as their residence.

The evidence before me confirms that the rental unit has five bedrooms. The Tenant testified that she and four others reside in the rental unit. I find this to be a reasonable number of occupants based on the size of the rental unit.

I remind the parties of section 9 of the Schedule to the *Residential Tenancy Regulation* which reads as follows:

#### **Occupants and guests**

**9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.

(2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.

(2.1) Despite subsection (2) of this section but subject to section 27 of the Act *[terminating or restricting services or facilities]*, the landlord may impose reasonable restrictions on guests' use of common areas of the residential property.

(3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

#### Issues to be Decided

1. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
2. Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The nature of the Tenant's request relates to an alleged illegal rent increase. The Tenant testified that the Landlord requested that she pay \$2,000.00 in rent, as opposed to \$1,700.00 as per the tenancy agreement. The Tenant testified that the Landlord sought this increase during the rent freeze imposed during the COVID-19 pandemic and resulting Provincial State of Emergency declaration. Introduced in evidence by the Tenant was a letter she sent to the Landlord on February 26, 2021 wherein she informed the Landlord that the requested rent increase was illegal.

The Tenant confirmed that she has not paid the \$2,000.00 requested by the Landlord and seeks a declaration that her rent is \$1,700.00 to dissuade the Landlord from issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as provided for in section 46 of the *Act*.

The Tenant also sought recovery of the \$100.00 filing fee paid for this Application.

### Analysis

After consideration of the Tenant's undisputed testimony and evidence I find as follows.

I find the Landlord has attempted to raise the Tenant's rent contrary to the *Residential Tenancy Act* and *Regulations*. As aptly noted by the Tenant, the Landlord attempted to raise her rent in November of 2020 during the rent freeze imposed by the Provincial Government in response to the COVID-19 pandemic. Consequently, the rent increase is not valid. I therefore grant the Tenant's request and declare the Tenant's rent to be \$1,700.00 per month. The Landlord may not raise the Tenant's rent unless that rent increase is done in accordance with the *Act* and the *Regulations*.

As the Tenant has been successful in her Application, I award her recovery of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the Tenant to reduce her next months' rent by \$100.00 as recovery of this sum.

### Conclusion

The Tenant's request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's rent is \$1,700.00 per month. The Landlord's rent increase of November 2020 is of no force and effect.

The Tenant may reduce her next months' rent by \$100.00 as recovery of the filing fee paid for her Application.

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: September 13, 2021

---

Residential Tenancy Branch