



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNC, FFT**

### Introduction

The hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated October 1, 2021 pursuant to section 47 of the Act; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72(1).

Two agents ("RR" and "GS") of the Landlord and the Tenant attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant testified he served the Landlord, and filed with the RTB, an amendment dated November 10, 2021 (the "Amendment") to change the service address of the Landlord. The Tenant testified the Notice of Dispute Resolution Proceeding and the Tenant's evidence ("NDRP Package") and the Amendment were served on the Landlord by registered mail on November 10, 2021. The Tenant submitted a copy of the registered mail receipt and tracking number for service of the NDRP Package and the Amendment on the Landlord. I find that the Amendment and NDRP Package and Amendment were served on the Landlord in accordance with sections 88 and 89 of the Act.

RR acknowledged that the Landlord did not serve any evidence on the Tenant for these proceedings.

Issues to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the Tenant fails in his application to cancel the 1 Month Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee for his application?

Background and Evidence

The Landlord stated that the residential premises had been purchased from the Tenant by the Landlord. The Landlord stated the parties entered into a tenancy agreement pursuant to which the tenancy commenced on September 1, 2021 on a month-to-month basis with rent of \$1,100.00 payable on the 1<sup>st</sup> of each month. The Tenant was to pay a security deposit of \$550.00 on September 1, 2021. The Landlord confirmed the Tenant paid the security deposit and that it is being held in trust for the Tenant.

The Landlord testified the 1 Month Notice was served on the Tenant by email on October 1, 2021. The Landlord did not provide any evidence the Tenant had consented to service of notices under the Act by email. The Tenant testified he did not receive the email until October 27, 2021.

The 1 Month Notice does not indicate any reason whatsoever for ending the tenancy nor does it indicate any details for the cause or causes for ending the tenancy.

RR testified that the Tenant has not paid any rent since the commencement of the tenancy on September 1, 2021 and as a result, the Tenant has been late paying the rent five months in a row. RR testified that the Tenant has rental arrears of \$11,000.00 calculated as follows:

Date	Owed	Paid	Balance
01-Sep-21	\$2,200.00		\$2,200.00
01-Oct-21	\$2,200.00		\$4,400.00
01-Nov-21	\$2,200.00		\$6,600.00
01-Dec-21	\$2,200.00		\$8,800.00
01-Jan-22	\$2,200.00		\$11,000.00
<b>Total</b>	<b>\$11,000.00</b>	<b>\$0.00</b>	<b>\$11,000.00</b>

The Tenant did not deny that he owed the Landlord for the aforesaid rental arrears.

### Analysis

The Landlord testified the Tenant owes rental arrears of \$11,000.00. It was not clear how the Landlord calculated those rental arrears on the basis of \$2,200.00 per month when the tenancy agreement specifies rent of \$1,100.00 per month. However, the discrepancy is not relevant for the purposes of my decision as set out below.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* 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, even though the Tenant applied for dispute resolution and he is the Applicant, the Landlord presents its testimony first.

The Landlord testified that the 1 Month Notice was served on the Tenant by email on October 1, 2021. The Landlord did not provide any evidence that the Tenant had consented to service of notices under the Act by email. The Tenant testified he received the 1 Month Notice on October 27, 2021. I find the Landlord did not serve the 1 Month Notice in accordance with any of the permitted methods set out in section 88 of the Act.

Furthermore, section 52 of the Act states:

- 52** 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.

[emphasis added in italics]

Furthermore, I have reviewed the 1 Month Notice and find that it does not specify any cause for ending the tenancy or provide any details of the cause or causes nor was there any document attached to the 1 Month Notice providing those details. I find the 1 Month Notice does not comply with the content requirements of section 52 of the Act.

Based on the above, I allow the Tenant's application and cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

As the Tenant has been successful in this application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act and, pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Conclusion:

I allow the Tenant's application to cancel the 1 Month Notice. The 1 Month Notice is of no force or effect. The tenancy continues until ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of her monetary award for recovery of the filing fee.

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: January 14, 2022

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Residential Tenancy Branch