



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE, MNDCT, OLC, DRI, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on January 26, 2022 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”), to dispute a rent increase, and reimbursement of the Application filing fee. They amended this Application on April 4, 2022 also seeking the Landlord’s compliance with the legislation and/or the tenancy agreement, and compensation for monetary loss. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 26, 2022. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

At the outset of the hearing, both parties confirmed they received the evidence of the other. I heard each party’s statements on the amount of material they received and how they received it. From this, I am satisfied both sides accomplished full disclosure and both parties’ evidence receives my full consideration herein.

### Preliminary Matter – unrelated issue

The *Residential Tenancy Branch Rules of Procedure* grant an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the One-Month Notice issued by the Landlord on January 26, 2022. I dismiss the Tenant's dispute of a rent increase, their monetary claim and plea for the Landlord's compliance with the legislation and/or the tenancy agreement, with leave to reapply.

### Issues to be Decided

Is the Tenant entitled to a cancellation of the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The Tenant provided a copy of the tenancy agreement. This document bears the parties' signatures from the start of the tenancy, jointly signed on November 30, 2018. The Tenant stated this document was transferred over from a previous Tenant, already bearing the Landlord's signature.

The parties revisited the agreement in a more informal manner on a yearly basis, effectively re-signing that document each year for a continuation of the tenancy. For each consecutive year, the year written in the document would be edited and updated with the parties' initials. The current iteration of the agreement is through to February 28, 2022. Both parties confirmed there was no new contract beyond that date, and the Tenant's understanding is that they currently take up residence in the rental unit on a "use and occupancy" status only.

The Landlord issued the Notice to End Tenancy on January 26, 2022, setting the end-of-tenancy date on February 1, 2022. In the hearing the Landlord acknowledged the correct date for an effective notice of this type is March 1, 2022. The Landlord indicated on page 2 that the "Tenant . . . has caused extraordinary damage to the unit." They provided details on that same page:

Tenants are not taking care of the house properly. Tenant started a fire in the kitchen on July 8, 2021 and caused severe damage to the house. Since tenants did not purchase any insurance policy, we have to file a claim from our own insurance company, causing our premium to hike. Repairing job has to be delayed as tenants are not helpful.

The Landlord in the hearing described the Tenant's assumption that it is a matter of the Landlord's insurance coverage is "something natural." The Landlord attempted to use their own contractor to re-construct the rental unit; however, the insurance company designated their own work team to complete the work, and this is much slower. The Landlord questioned the Tenant's complaints and queries on many steps in the reconstruction process, stating they are caught in the middle between the Tenant and the contractor. They reiterated that work now being done is at their own expense after the Tenant finalized a settlement with the insurer.

The Tenant submits this One-Month Notice came very late after the actual fire in the rental unit which was an accident. They stated that this was a retaliation after the Tenant raised an issue with a rent increase that they deem to be illegal – the Landlord served the One-Month Notice "virtually the same day" that the Landlord received their letter objecting to that rent increase.

In their evidence, the Tenant presented their letter of January 23, 2022 in which they object to the Landlord's proposed rent increase. The postal tracking record they provided shows delivery of that letter to the Landlord on January 26.

Also in their testimony the Tenant admitted to having an argument with the contractors. They presented that they were not being updated on information of the construction from either the contractors or the Landlord. The Tenant presented evidence to show the contractors have left the rental unit in a state of disarray during the construction

In a written statement, the Landlord set out:

To be more precise, we are not actually evicting our tenant. We are just not renewing our rental-contract with them after the old one has expired. And certainly not out of revenge, the reason is very obvious, we need to bring the contractor back to work on the house and completing the repairing of the house, without further disturbance from our tenant.

### Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy.

For one, the Landlord in their message prepared for this hearing stated that they were not intending to evict the Tenant; rather, their intention was to not renew the contract with the Tenant. If the Landlord is seeking to end the tenancy for that reason, issuing a One-Month Notice for something allegedly egregious and wilful such as property damage is factually not correct, and done in bad faith.

Secondly, the Landlord issued the One-Month Notice virtually six months after the event in question which was a kitchen fire. I am satisfied the matter was an accident, and the Tenant described in the incident in the hearing. This was not a wilful destruction of property as a matter of ending a tenancy for cause would normally be. I am satisfied the matter was handled by insurance who settled the matter in a legal manner, even though that process may have been slow or dissatisfactory to both parties here.

Finally, the Landlord raised the issue of the Tenant delaying the repair process. There is insufficient evidence from the Landlord to show this. They did not refer to specific incidents that stopped or interrupted the repair efforts, as slow as they may be.

I find the Landlord gave a conflicting statement where they stated they were not seeking to evict the Tenant, instead seeking to end the tenancy. The One-Month Notice, in a process authorized by s. 47 of the *Act*, is for the Landlord ending a tenancy. Such as the service of this One-Month Notice to the Tenant existed, I find it is an indirect method of notifying the Tenant that they wish to not renew the contract. This One-Month Notice was issued in bad faith, and I find the Landlord was relying on the reason of the fire simply as a pretext to attempt to not renew the contract by the end of February.

For the reasons above, I find the One-Month Notice is not valid. The Landlord has not met the burden of proof; I so order the One-Month Notice cancelled.

### Conclusion

For the reasons above, I order the One-Month Notice issued on January 26, 2022 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 4, 2022

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Residential Tenancy Branch