



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Albert Heights Property Ltd. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 11, 2022 ("One Month Notice"), and to recover the \$100.00 cost of his Application filing fee.

The Tenant, his counsel, L.K. ("Counsel"), and an agent for the Landlord, R.T. ("Agent"), appeared at the first teleconference hearing on April 25, 2022; however, Counsel asked for an adjournment, as he had Covid and did not feel well enough to represent his client adequately. As the Agent had not provided evidence of his authority to represent the Landlord, I found that it would be beneficial to both Parties if we adjourned and reconvened as soon as possible. In the meantime, Counsel could recover and the Agent could provide his authorization to participate in the hearing.

We reconvened the teleconference hearing on May 6, 2022, and the Tenant, his Counsel, and the Agent, appeared and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Agent submitted a copy of his employment contract with the new Landlord dated April 20, 2022. Further, I was advised by the Parties that the Agent was an agent of the former Landlord, as well, and therefore, I find that he has knowledge and experience with this matter before and after the change of ownership.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

While waiting for the hearing to be reconvened, the Agent submitted a copy of his employment contract with the new owners. The Parties did not dispute that the Agent worked for the previous owner of the residential property. In that role, the Agent served the Tenant with the One Month Notice, detailed below. Based on the evidence before me on this matter, I find that the Agent has sufficient authority to represent the new owner and to comment on events that occurred prior to the sale of the residential property.

#### Preliminary and Procedural Matters

The Tenant provided his email address in the Application, and the Agent provided the Landlord's email address in the first hearing. The Parties confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of his \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the tenancy began as a fixed term starting on December 15, 2013, and ran to December 31, 2014. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$710.00, due on the first day of each

month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$355.00, and a pet damage deposit of \$200.00.

The Parties agreed that the Landlord served the Tenant with the One Month Notice, which was signed and dated January 11, 2022. The One Month Notice has the rental unit address, it was served by attaching a copy to the rental unit door on January 11, 2022, with an effective vacancy date of Feb 15/22, which is automatically corrected to February 28, 2022, by the Act. The One Month Notice was served on the grounds that Tenant is repeatedly late paying rent; the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and that the Tenant knowingly gave false information to prospective tenants or purchasers of the rental unit or property.

Counsel asked to make the following comments first:

It is very important to understand the chronology of the entire relationships that [the Tenant] has with the property on [residential property location]. As part of the package, I provided the original agreement that was entered into between. [The Tenant and the Agent] in December 2013. Basically, the agreement was to start on December 15, 2013, for one year, and then thereafter to continue month to month. There is no question that [the Agent] had the authority as agent to sign the contract. The Parties entered into the contract.

Where the issue arises is this is an allegation dealing with, basically, an allegation of none or late payment of rent in January of 2022. Then what we do have is evidence supplied by [the Agent] that, basically, he filed the requisite paperwork. There is no dispute that [the Tenant] filed a response asking for dispute resolution. But there is correspondence that [the Agent] sent to [the Tenant] dated February 19, 2022, saying: "Please be advised the current owner of the building has informed me **not** to pursue the 30 Day Notice you were given on January 11, 2022." [emphasis in original]

I asked the Parties who ordered the Agent to discontinue the One Month Notice, and Counsel said:

On February 19, [2022], [the Agent] wrote to [the Tenant] on [the original Landlord's letterhead]. [The Tenant] was advised that [the Agent] has been instructed by the owner not to pursue [the eviction notice], given rent was paid. And the owner didn't want any disruptions, while they were selling the building.

The Agent stated:

Basically, what happened was that [the Tenant] was given his notice for late payment, and other issues on the 30 Day Notice, and during that time the building was up for sale, and I told the owner that I had given one of the Tenants a 30 Day Notice.

Things happened with [the Tenant] that alarmed the owners. They were a little afraid of what [the Tenant] was going to do. One issue is he talked to some prospective buyers. He knew they were coming. He started making rather bad comments about the building, so the old owner said, 'If he's paid the rent, just retract it.'

So, I tried. I sent him what the owner had said – no more disturbances, and I'm willing to retract it. I said the owner is not going to pursue the 30 Day Notice. But it said: 'If you are in agreement, please contact the RTB, and withdraw', and I gave him a week to do it. I told him, 'The owner is willing to pay filing fees.'

I said if you're not choosing to withdraw by February 26, I will assume you are prepared to go to arbitration. I heard no contact from [the Tenant] or the RTB that he had made any attempt to withdraw. He had plenty of time to withdraw. And the building did sell. Then the leases and the RTB issues were transferred with the new owner. The new owner said we should proceed.

Counsel replied:

I was not aware of the February correspondence until fairly recently when [the Tenant] was trying to provide and organize documentation. [The Agent] in my respectful submission had no authority to put conditions on the withdrawal of the One Month Notice. The position of the previous owner was to withdraw.

The letter from the Agent to the Tenant dated February 19, 2022, reads as follows:

February 19<sup>th</sup>, 2022

Re One Month Notice to End Tenancy dated January 11<sup>th</sup>, 2022

[Tenant]

Please be advised the current owner of the building has informed me not

to pursue the 30 Day Notice you were given on January 11<sup>th</sup>, 2022. They have instructed me to do so as you have paid February's rent and they do not want any disruptions while they are selling the building.

If you are in agreement with this withdraw, then please contact the Residential Tenancy Branch and log into your application and select the withdraw button. Please do so by February 26<sup>th</sup>, 2022. The owner is willing to pay any filing fees you may have incurred with a receipt.

If you are not in agreement with the withdraw and have not chosen the withdraw option by February 26<sup>th</sup>, 2022, I will assume you are prepared to go to arbitration and I will then proceed to prepare for the upcoming scheduled Dispute Resolution dated April 25, 2022.

[Agent's name and signature]

[reproduced as written]

("Letter")

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I have declined to review the Parties' evidence regarding the reasons for the issuance of the One Month Notice, as I find that I agree with Counsel that the One Month Notice was withdrawn by the Party that issued it in the Letter.

Based on the wording of the Letter, I find it more likely than not that the Agent exceeded the Landlord's instructions by imposing conditions on the Tenant for effecting the Landlord's cancellation of the One Month Notice. I find that requiring the Tenant to withdraw from the dispute resolution process in order for the Landlord's cancellation to be effective is inconsistent with the text of the Letter.

I find that the Landlord's instructions were to make One Month Notice go away, because he did not want anything to disrupt the sale of the residential property. I find that the Agent's added the conditions were redundant, given the Landlord's instructions.

The Tenant's objective in applying for dispute resolution was for an Order cancelling the

One Month Notice. However, if the Landlord wanted to cancel it on his own, there was no need for the Tenant to attend or even withdrawal his Application.

If matters have been resolved, it is considerate of the Branch resources for parties to cancel the hearings; however, some parties simply do not attend the hearing if it is no longer needed. I find this is not a ground to dismiss the Landlord's cancellation.

The Tenant would not have been reimbursed by the RTB for withdrawing or cancelling his Application; however, the Landlord had offered to pay that fee. I find that the Agent's ultimatum was not part of the Landlord's instructions, that it was unnecessary, and that it overstepped the Agent's authority to carry out the Landlord's instructions.

Further, I infer from Counsel's comments in the hearing that the Tenant had not retained Counsel at the time he received the Letter. I find that the Tenant is not very sophisticated with administrative tribunal procedures, which may have contributed to his not following the Agent's (unnecessary) directions in the Letter; however, this should not be a reason to withhold the cancellation of the One Month Notice.

Based on these considerations of the evidence before me, I find that the One Month Notice was cancelled by its issuer on February 19, 2022, and is, therefore, void and unenforceable, pursuant to section 62 of the Act.

As this result is in line with the Landlord's instructions in the Letter, I award the Tenant with recovery of his \$100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act. I **authorize the Tenant to deduct \$100.00 from one upcoming rent** payment in complete satisfaction with this award.

However, I **caution the Tenant** to pay his rent on the first of each month from now on, or he could be served with an eviction notice from his new Landlord.

### Conclusion

The Tenant is successful in his Application, as I found that the Landlord had withdrawn the One Month Notice in his Agent's letter dated February 19, 2022. The One Month Notice is cancelled and is void and unenforceable.

The Tenant is awarded recovery of his \$100.00 Application filing fee from the Landlord. The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in

complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 18, 2022

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Residential Tenancy Branch