



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDCT, PSF, OLC, FFT

### Introduction

On March 7, 2022, the Tenant 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 *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, and B.F. attended the hearing as an agent for the Landlord. 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, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on March 15, 2022. B.F. confirmed that the Landlord received this package; however, he advised that only three pages of the Tenant’s evidence was served. The Tenant then confirmed that only three pages of evidence were included in this package. Based on this undisputed testimony, I am satisfied that the Landlord has been duly served the Tenant’s Notice of Hearing package, and three pages of evidence. As such, this evidence will be accepted and considered when rendering this Decision.

B.F. advised that the Landlord’s evidence was served to the Tenant, on June 6, 2022, to an address provided by the Tenant via text message on March 30, 2022. The Tenant stated that he did not receive this evidence, that he did provide this address to the Landlord, that he did not live there anymore, and that he did not provide an alternate

address to the Landlord after moving from this one. Based on this testimony, I am satisfied that the Landlord served their evidence to the only address provided by the Tenant for service of documents. As such, I find that the Tenant has been deemed to have received this evidence five days after it was mailed. Consequently, this evidence will be accepted and considered when rendering this Decision.

At the outset of the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Notice, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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 is compliant with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

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 most current tenancy started on March 1, 2021, as a fixed term tenancy of one year, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on March 30, 2022. Rent was established at \$750.00 per month and was due on the last day of each month. A security deposit of \$400.00 was paid and B.F. was cautioned that this exceeded the amount permitted to be collected

pursuant to Section 19 of the *Act*. A signed copy of a tenancy agreement was submitted as documentary evidence.

After hearing submissions from the parties, the parties also agreed that the Landlord was actually sub-leasing the rental unit. While B.F. was unsure of the details, it appeared as if the Landlord was likely in a month-to-month tenancy with her landlord, and that she was then sub-leasing to other people, on fixed term tenancies, contrary to Policy Guideline # 19. Although, he stated that she had written permission from her landlord to do so. The Landlord's own tenancy then ended due to an Order of Possession that was granted to the original landlord of the property, against the Landlord. As a result, this also then ended the Tenant's tenancy.

Given that this tenancy has ended already, I am unable to cancel the Notice. Moreover, as the tenancy has ended, I am unable to consider the Tenant's claims and make a Decision on them, so these are dismissed without leave to reapply. The exception to this would be the Tenant's claim for monetary compensation. However, the Tenant claimed for compensation in the amount of \$10.00 and stated in the description that "I do not know what i [sic] am able to claim at this point in the hearing." As such, I have dismissed this claim with leave to reapply.

In addition, during the hearing the Tenant advised that he was seeking a return of the security deposit. The Tenant was informed that this could not be addressed as it was not part of his Application. However, both parties were informed of the manner with which a security deposit is dealt with at the end of a tenancy, in accordance with Section 38 of the *Act*.

### 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.

When reviewing the totality of the evidence and submissions before me, as the Tenant already gave up vacant possession of the rental unit on March 30, 2022, because of the Landlord's landlord receiving an Order of Possession of the rental unit, I cannot cancel a Notice for a tenancy that has already ended. As such, the request to cancel the Notice, the request for a provision of services or facilities, and the request for an Order to comply are all dismissed without leave to reapply. However, the Tenant's request for a Monetary Order for compensation is dismissed with leave to reapply.

While the Tenant was not successful in this Application, I find that the Landlord's sub-letting of the rental unit on a fixed term tenancy, while the Landlord's own tenancy was a

month-to-month tenancy, was an attempt to contract outside of the *Act*. As such, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

The Tenant's Application is dismissed without leave to reapply, with the exception of the Tenant's claim for monetary compensation, which is dismissed with leave to reapply.

In addition, the Tenant is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 21, 2022

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Residential Tenancy Branch