



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, FFT, MNDCT, LRE**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord and Support, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on March 28, 2022 by posting the notice on the Tenant's door. The Tenant confirms receipt of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on March 31, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on April 21, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant confirmed that the registered mail package also included her evidence. The Tenant referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirms receipt of the NoDRP package, but not of the Tenant’s evidence. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on April 26, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

At the outset of the hearing, the Tenant stated that she vacated the rental unit on May 5, 2022. The Tenant withdraws her claims to cancel the One Month Notice, and her claim seeking an order to suspend or set conditions on the Landlord’s right to enter the rental unit. The Tenant is still seeking compensation for a monetary loss or other money owed.

#### Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to recovery of the application filing fee?

#### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on August 22, 2019. The fixed term ended on August 21, 2020, then the parties entered into a second fixed term tenancy. The second fixed term tenancy ended on August 21, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,400.00 payable on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$600.00 were collected at the start of the tenancy and are still held by the Landlord. The Landlord submits that they have another file pending for unpaid rent.

The Tenant testified that her monetary claim is supposed to be for \$2,400.00, equivalent to one month’s rent. On March 24, 2022, the Tenant said that the Landlord came to the house and told the Tenant that they were planning to sell the house. The Tenant said

she was happy for them. She said the Landlord sent her an email giving her a Two Month Notice; however, it was not a formal Two Month Notice. She told the Landlord that he would have to give her a free month of rent, and within five minutes, the Landlord revoked the notice.

The Tenant said that the Landlord kept coming into her house, and she had meetings online, and other business dealings that were being interrupted. The Tenant argues that the situation for her became very unstable and unpredictable. The Tenant said the Landlord came into her house six times from March 24 to March 31. Having to quit and stop work because of the Landlord's entries, and being evicted, as the Tenant alleges, because of the smoke alarm, caused her hardship.

The Landlord described the visits to the rental unit as:

- March 24 – just back from overseas, they had not seen the Tenant in some time and wanted to tell her that they were planning to sell the house.
- March 27 – cleaning the roof as agreed with the Tenant. Also brought a realtor to have a look at the home.
- March 28 – served the One Month Notice.
- March 31 – attended the home at the Tenant's request to fix the toilet seat and look at the dryer lint catcher.
- April 1 – delivered a new dryer lint catcher, did not go in, just dropped it off.
- April 10 – visit from our tradesman to look at the carpets, but the visit was cancelled because he was informed that the Tenant had COVID-19.

The Tenant argued that on March 27, 2022, the Landlord went through the Tenant's garage and every room of her home. She said he moved stuff around.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. The only viable claim in this matter is the Tenant's monetary claim; therefore, the Tenant bears the onus to prove her claim.

***Liability for not complying with this Act or a tenancy agreement***

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant has not pointed me to a Section of the Act, Regulation, or tenancy agreement of which the Landlord has breached; however, the circumstances of the Landlord attending the Tenant's rental unit being too frequent and unpredictable can be described as breaching the Tenant's right to freedom from unreasonable disturbance.

When the Landlord returned from an overseas stay, the Landlord said that he had not seen the Tenant for some time, and he wanted to advise her that he was planning to sell the residential property. On March 27, 2022, the Landlord cleaned the roof as agreed to by the Tenant, and the Landlord met with a real estate agent to show her the house in preparation for sale. The Landlord attended the home on March 31, 2022 to

repair a toilet seat and look at the dryer lint catcher. The Landlord attended the home the next day to deliver a new dryer lint catcher, although, he did not go inside.

I do not find that the Landlord's attendance at the home was unreasonable in frequency. If the Landlord is planning to sell the residential property, then it is reasonable that he would have to make arrangements for a real estate person to view the home so as to make an assessment of the sale price, and arrange any other contingencies needed in this context. As breaching the Act, Regulation or tenancy agreement provisions is the first part of the test that must be met, I find the Tenant has not proven this part of her claim on a balance of probabilities. Accordingly, I find that the Tenant is not entitled to an award of monetary compensation, and I dismiss her claim without leave to re-apply.

As the Tenant was not successful in her claim, I do not grant her recovery of the application filing fee.

### Conclusion

The Tenant's application for dispute resolution is dismissed without leave to re-apply.

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

Dated: August 10, 2022

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Residential Tenancy Branch