



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      TT: CNC  
                             LL: OPC, FFL

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Tenant’s Application for Dispute Resolution was made on May 5, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a One Month Notice for Cause dated April 27, 2022 (the “One Month Notice”).

The Landlord’s Application for Dispute Resolution was made on May 11, 2022 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- an order of possession for cause; and
- an order granting recovery of the filing fee.

The Tenant, the Tenant’s Advocate D.F., and the Landlord’s Agent J.J. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant’s Advocate stated that the Tenant’s Application and documentary evidence was served to the Landlord by Canada Post Registered Mail on May 12, 2022. The Tenant provided a copy of the Registered Mail receipt in support. The Landlord’s Agent stated that his mother did not mention if she received the Tenant’s Application. I find that the Tenant has provided sufficient evidence to demonstrate that their Application was sufficiently served to the Landlord in accordance with Section 89, and is deemed to have been served to the Landlord five days later, on May 17, 2022 pursuant to Section 90 of the *Act*.

The Tenant confirmed receipt of the Landlord's Application and documentary evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling a One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is not successful, is the Landlord entitled to an order of possession, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on March 1, 2021. Currently, rent in the amount of \$1,350.00 is due to the Landlord on the first day of each month. The Tenant paid a security in the amount of \$1,350.00 which the Landlord continues to hold. The Tenant continues to occupy the rental unit.

The Landlord's Agent testified that the Tenant was served with the One Month Notice on April 27, 2022, by posting it on the door of the dispute address. The Tenant confirmed having received the One Month Notice on the same day. The Landlord's reason for ending the tenancy on the One Month Notice is;

*"Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the safety or lawful right of another occupant or the Landlord, and put the landlord's property at significant risk"*

*“Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to cause damage the landlord’s property”*

*“Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.”*

*“Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.”*

*“Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.”*

The Landlord’s Agent stated that on December 11, 2021 the Landlord received notification from the building manager stating that there was a leak from the second floor laundry room which was causing water to leak into the unit and lobby below. The Landlord provided picture of the water pooling in the lobby and also damage to the ceiling above as a result of the leak.

The Landlord’s Agent stated that the building manager attended the laundry room to find the Tenant rambling incoherently, while pouring buckets of water into the sink in the laundry room. The Landlord’s Agent suspected that the Tenant was under the influence. The Landlord’s Agent stated that the building manager found water running through the hallway and also there was broken glass from the fire extinguisher holder.

The Landlord’s Agent stated that the Tenant also has guests staying with her and has a cat. For these reasons, the Landlord’s Agent is seeking to end the tenancy based on the One Month Notice.

The Tenant’s Advocate stated that the Tenant attended the laundry room to find that there was a water leak. The Tenant’s advocate stated that the Tenant attempted to clean up the flood by scooping up buckets of water and pouring it into the laundry room sink. The Tenant’s advocate denies that the Tenant did anything wrong, therefore, the One Month Notice should be cancelled.

### Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice on April 27, 2022. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant caused the leak in the laundry room. I find that the Landlord's Agents testimony and the details of cause noted on the One Month Notice are consistent with the Tenant's Advocates submissions which indicate that the Tenant was observed pouring water into the laundry room sink. This action would confirm that the Tenant was attempting to clean up the leak, rather than pouring the water out of the sink.

With respect to the Landlord's Agent's claim that the Tenant has a cat and guests without permission, I find that without a copy of the tenancy agreement, I am unable to determine if the Tenant has contravened any term of the agreement.

In light of the above, I cancel the One Month Notice, dated April 27, 2022. I order that the tenancy will continue until ended in accordance with the Act.

As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated April 27, 2022 is cancelled. The tenancy will continue until ended in accordance with the Act.

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: September 21, 2022