



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, PSF, OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 19, 2022. They dispute the One Month Notice to End Tenancy for Cause (the “One-Month Notice”), seek the provision of services/facilities, the Landlord’s compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 29, 2022. In the conference call hearing, I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions in the hearing.

At the start of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, the hearing proceeded.

### Preliminary Matter – related issues on the Tenant’s Application

The *Residential Tenancy Branch Rules of Procedure* permit 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. The most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the landlord.

The Tenant's request for provision of services/facilities, and the Landlord's compliance with the legislation/tenancy agreement, are dismissed with leave to re-apply.

#### Preliminary Matter – late evidence submission

The hearing process is governed by the *Residential Tenancy Branch Rules of Procedure*, crafted to ensure a fair, efficient and consistent process for resolving disputes.

Rule 3.14 specifies that evidence that is intended to be relied on at the hearing must be received by the respondent (here the Landlord) and the Residential Tenancy Branch "not less than 14 days before the hearing."

The Tenant submitted evidence concerning their fire alarm on September 27, 2022, two days prior to the scheduled hearing. The Landlord confirmed they received this from the Tenant on the day before the hearing. This concerns a very recent issue they had with that fire alarm.

Given that I am not proceeding on the issues of repairs or other services in this hearing, the matter that concerns this evidence is not up for consideration. In all fairness the Landlord should be afforded the opportunity to respond to the evidence in a hearing on that separate issue. The evidence is excluded from my consideration in this hearing, by application of Rule 3.17.

#### 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 of the rental unit?

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

#### Background and Evidence

The Tenant submitted a copy of the tenancy agreement. Each party confirmed the basic terms of the tenancy: a rent amount of \$750 that increased to \$822.50 over the course of the tenancy, payable on the first of each month. The agreement specifies that the Tenant has parking for one vehicle, in a separate garage, included in the rent.

The copy of the One-Month Notice document in the evidence shows the landlord issued it on May 10, 2022. The Tenant confirmed they received this via email, with a hardcopy following. The document indicates the final move-out date of June 6, 2022.

On page 2 of the document, the landlord indicated the following:

- ☐ Tenant or a person permitted on the property by the tenant has
  - ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

On page 3 the landlord listed details:

[The Tenant] got the key of the main garage without my permit on May 8, 2022, and occupied [their] cars in the garage for two days until May 10<sup>th</sup> morning, keeping the door opened and unlocked day and night which cause the risk of my belongings in the garage loss.

In the hearing, the Landlord described the Tenant's actions that caused concern and prompted their issuing the One-Month Notice. They were told about the issue via other building residents, and did not observe the situation directly. They were told that the Tenant asked for the larger garage key, telling the other resident that they had rented the large garage. They moved their two vehicles into that garage space. The other resident inquired to the Tenant why they could do that; however, the Tenant did not provide an answer. The Tenant evidently returned the key to the other resident but the next day their car was still parked in the garage space.

The Landlord described asking the Tenant "again and again" to move their vehicles out from the garage but the Tenant only moved their vehicles two days later on May 10. That was when the Landlord visited to the rental unit property to assess the situation. At that time, they informed the Tenant they would call the police if they did not move the vehicles out from the garage.

The Tenant normally uses a single-vehicle smaller garage for their vehicle. The Landlord described the other residents having children, and the door remaining open poses a safety issue in that situation.

In their evidence, the Landlord pointed to a letter from the other building resident who gave the Tenant the larger garage key directly. They described the events as the Landlord did in the hearing. The Landlord also provided a text message from another resident, from May 10, describing the “bigger garage” door opened, but closed as of 9am on May 10. The Landlord also questioned how the Tenant managed an app that allowed them to open the garage door, pointing to their record of opened/closed doors showing who operated which function.

In response to the Landlord’s claim on why they seek to end the tenancy, the Tenant provided that they had previously inquired about using the large garage for two vehicles. This was to ascertain whether it was worth paying for additional garage space, and this move of their vehicles into the garage on May 8 was in line with understanding the dimensions of the garage to see if it was suitable. They stated the garage door was closed, yet the separate entrance to the garage was unlocked. As for the timeline, they stated their vehicles were out in the morning of the second day after they moved their vehicles into that space.

They described not knowing that garage use required permission, and this was not clear to them. They returned the key to the other resident when asked to do so. They were shocked by the Landlord seeking to end the tenancy for this reason, being a single infraction in the longer-term tenancy. This One-Month Notice was sent to them at 10:45pm on May 10, without any discussion on the issue.

### 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 provide they have cause to end the tenancy. On my review, they have not provided sufficient evidence to prove the details of illegal activity, or the risk to others’ health or safety. There is both a lack of quality and quantity of necessary evidence to overcome the burden of proof here.

I find there was no previous infraction by the Tenant on garage use or parking on the rental unit property; the Landlord did not produce evidence of that. I find this is an end-of-tenancy notice the Landlord served hastily to the Tenant, without consideration to its impact. This is

also without consideration to the longer term of this tenancy, seemingly without incident, and this carries weight against the Landlord wanting to end the tenancy for this minor infraction or misunderstanding.

In sum, this was a minor parking violation that the Tenant rectified when requested to do so. This is not a serious infraction that warrants an end to this tenancy, minus evidence showing that there were strict parking restrictions in place, or previous instances of the Tenant violating any agreement about parking. There is certainly no activity present that can be deemed “illegal” and the Landlord has not shown evidence of how the Tenant “seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” The Landlord did not even provide ample evidence to show the garage door remained open as a result of the Tenant’s use of that space. They issued this One-Month Notice on specious claims.

I find the One-Month Notice is not valid. The Landlord has not met the burden of proof; so I order the One-Month Notice to be cancelled. As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

### Conclusion

For the reasons above, I order the One-Month Notice issued on May 10, 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: September 29, 2022

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Residential Tenancy Branch