



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<b><u>Dispute Codes</u></b>	For the tenant:	CNC, FF
	For the landlord:	OPC, FF

### **Introduction**

This hearing was convened as the result of the cross-applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord; and
- recovery of the cost of the filing fee.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to a 1 Month Notice issued to the tenant; and
- recovery of the cost of the filing fee.

The tenant, landlord and the landlord's assistant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties were affirmed.

Prior to the hearing, the parties were informed that recording of the dispute resolution hearing is prohibited.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

There was little evidence submitted by either party. It was not clear if the parties received all the evidence of the other. The tenant denied receiving the landlord's application sent by registered mail, and the Canada Post website shows the registered mail was returned to sender, due to an addressing error. Nonetheless, I did not find it necessary to adjourn the hearing, due to evidence or procedural issues and neither party requested it. I made this determination because both parties had the relevant evidence before them relating to the 1 Month Notice, that is, a copy of the Notice and the attached letter from the city. These two documents formed the basis of this dispute.

Additionally, I find the tenant did not receive the landlord's application. However, I also elected to continue the hearing, for the reason that the only issue before we was to determine the validity of the 1 Month Notice.

#### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support 1 Month Notice?

Is the landlord entitled to an order of possession of the rental unit?

#### Background and Evidence

I heard testimony that the tenancy began on October 1, 2017, for a monthly rent of \$1,300 and a security deposit of \$650 paid to the landlord. The tenant said the current monthly rent is \$1,400.

The evidence shows the landlord served the tenant two 1 Month Notices to end the tenancy. The first one was incomplete and the second one corrected the missing information. The parties filed a copy of the 1 Month Notice at issue, the one dated May 30, 2022. The tenant filed a copy of the 1 Month Notice dated May 25, 2022.

The 1 Month Notice, dated May 30, 2022, listed an end of tenancy date of June 30, 2022. The tenant confirmed receiving the 1 Month Notice on May 30, 2022, when it was found attached to the tenant's door.

It is noted that the tenant's application in dispute of the Notices was filed on June 4, 2022, within the deadlines required by the Act to dispute the Notice.

Pursuant to Rule 7.18, the landlord proceeded first in the hearing to give evidence to support the Notice.

The cause listed on the Notice for ending the tenancy was that the rental unit must be vacated to comply with a government order. In the Details of Causes portion of the 1 Month Notice, the landlord wrote, the following:

*The reason for eviction is the government has issued a notice regarding an illegal house for (\*residential property address\*). All tenants must move out by June 30, 2022.*

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord's evidence to support the 1 Month Notice was a letter received from the local city.

In response to my inquiry, the landlord's assistant said that they received the letter from the local city in which they were given two options. The letter, filed in evidence, informed the landlord that there was a bylaw infraction as a suite had been constructed without permits. The letter also informed the landlord that there were two options available to correct the infraction. The landlord could either obtain the necessary permits to legalize the suite and if that was done, to obtain a rental licence, or to decommission the suite.

The landlord's assistant said that there were 3 separate suites in the home.

The landlord's assistant said that the landlord could not afford to obtain the required permits and wanted to turn the home into a single family home.

Tenant's response –

The tenant said that there were two other tenants in the residential property, who also received a 1 Month Notice from the landlord and that they both vacated. The tenant said that despite the landlord trying to evict all three tenants because of the letter, the landlord began showing the property after the two other tenants vacated and that two other separate tenants have already moved into the property.

The landlord's assistant denied that, as they were only showing the property in order to have someone ready when this dispute was over.

The tenant said in response, that he called the landlord not long ago and asked the landlord to have the new upper tenants turn down their music.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 47 of the Act permits a landlord to seek termination of a tenancy by issuing a One Month Notice for a variety of causes. In this case, the landlord alleged that the rental unit must be vacated to comply with a government order.

Upon review of the 1 Month Notice to End Tenancy dated May 30, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act.

After reviewing the evidence, I find the landlord was not issued a government order from the City. Instead, I find the letter the landlord relied upon to issue the 1 Month Notice was a letter from the City giving the landlord options to correct a bylaw infraction.

For this reason, I find the landlord submitted insufficient evidence that the rental unit must be vacated to comply with a government order.

Therefore, I grant the tenant's application and **order** the One Month Notice dated May 30, 2022 is cancelled and of no force or effect. The tenancy continues until it may otherwise legally end under the Act.

To resolve all matters in the tenant's application, I also **order** the Notice dated May 25, 2022, is cancelled and of no force or effect. I make this order as the landlord presented no evidence to support the Notice and confirmed that it was deficient when they served the tenant a second, corrected 1 Month Notice.

I also award the tenant recovery of his filing fee of \$100, pursuant to section 72(1) of the Act.

I grant the tenant a one-time rent reduction in the amount of \$100 to satisfy their monetary award. The tenant should advise the landlord when they make this deduction and the landlord may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent when the tenant makes the \$100 authorized deduction.

#### Landlord's application –

As I have granted the tenant's application and ordered that the 1 Month Notice is cancelled, I **dismiss** the landlord's application for an order of possession of the rental unit and recovery of the filing fee, **without leave to reapply**.

#### Conclusion

The tenant's application is granted and I have cancelled the 1 Month Notices dated May 25, 2022, and May 30, 2022. The tenant is granted a one-time rent reduction of \$100 for recovery of the filing fee.

The landlord's application is dismissed, without leave to reapply.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: September 01, 2022

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Residential Tenancy Branch