



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC OLC FFT**

### Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) in which the Tenant applied for:

- an order cancelling a notice to end tenancy (“Notice to End Tenancy”); pursuant to section 47;
- an order that the Landlord comply with the Act, the *Residential Tenancy Regulations* and/or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for the Application from the Landlords pursuant to section 72.

The Landlord and Tenant attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

The Tenant stated he served the Notice of Dispute Resolution Proceeding and his evidence (collectively the “NDRP Package”) on the Landlord by registered mail on August 6, 2022. The Tenant submitted the Canada Post tracking number for service of the NDRP Package on the Landlord to corroborate his testimony. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

The Landlord stated he did not serve the Tenant with any evidence.

### Issues to be Decided

- Is the Tenant entitled to cancellation of the Notice to End Tenancy?
- Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement?
- If the Tenant is not entitled to cancellation of the Notice to End Tenancy, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?
- Is the Tenant entitled to recover the filing fee of the Application from the Landlord?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a signed copy of the tenancy agreement ("Tenancy Agreement"). The parties agreed the tenancy commenced on August 15, 2021, for a fixed term ending August 15, 2022, with rent of \$1,650.00 payable on the 1<sup>st</sup> day of each month. Pursuant to the addendum to the Tenancy Agreement, the Tenant was required to pay, and did pay, the entire rent for the one-year term of the tenancy at the commencement of the tenancy. The Landlord admitted the Tenant paid a security deposit of \$825.00 and that the Landlord was holding the deposit in trust for the Tenant.

The Tenant submitted into evidence a text from the Landlord received on July 13, 2022 that stated:

We are only planning to have our agreement only until August 15, 2022. Please accept this as notice of termination.

The Landlord admitted he sent the foregoing text to the Landlord. The Landlord stated that, when he sent the text to the Tenant, he was not aware that he was required to serve the Tenant with a formal notice to end tenancy as prescribed by the Director of the Residential Tenancy Branch ("RTB").

## Analysis

The Landlord sent the Tenant a text message in which he stated:

We are only planning to have our agreement only until August 15, 2022. Please accept this as notice of termination.

Section 44(1) of the Act states:

- 44(1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
    - (i) section 45 *[tenant's notice]*;
    - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
    - (ii) section 46 *[landlord's notice: non-payment of rent]*;
    - (iii) section 47 *[landlord's notice: cause]*;
    - (iv) section 48 *[landlord's notice: end of employment]*;
    - (v) section 49 *[landlord's notice: landlord's use of property]*;
    - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
    - (vii) section 50 *[tenant may end tenancy early]*;
  - (b) *the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
  - (c) the landlord and tenant agree in writing to end the tenancy;
  - (d) the tenant vacates or abandons the rental unit;
  - (e) the tenancy agreement is frustrated;
  - (f) the director orders that the tenancy is ended;
  - (g) the tenancy agreement is a sublease agreement.
- (3) *If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.*

[emphasis in italics added]

The Tenancy Agreement stated the tenancy was for a one-year term ending on August 15, 2022. The Tenancy Agreement did not state the Tenant was required to vacate the rental unit at the end of the fixed term. As such, section 44(3) of the Act provides that the Landlord and Tenant were deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms. There is no evidence before me that the Tenant gave a notice to end tenancy, vacated or abandoned the rental unit or that the Landlord and Tenant mutually agreed to end the tenancy. As such, in order to end the tenancy, the Landlord was required to rely upon another subsection of section 44(1) of the Act to end the tenancy. Other than for the Notice to End Tenancy, there is no evidence before me that the Landlord relied on any of the other subsections of section 44(1) of the Act. Section 52 of the Act states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) *when given by a landlord, be in the approved form.*

[emphasis in italics added]

The Notice to End Tenancy given by the Landlord was not in an approved form for a notice to end tenancy. As such, the Notice to End Tenancy was not effective. Based on the foregoing, I find the Tenant is entitled to cancellation of the Notice to End Tenancy. The tenancy continues until ended in accordance with the Act.

As the Tenant has been successful in the Application, I award the Tenant the filing fee of \$100.00 for the Application pursuant to section 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to withhold \$100.00 from his monthly rent on a one-time basis in satisfaction of this amount. The Landlord may not serve the Tenant with a Ten Day Notice for Unpaid Rent and/or Utilities when the Tenant makes the \$100.00 deduction from his rent.

I would recommend that the Landlord call the Contract Centre of the RTB, at the phone numbers listed below, to obtain information on the requirements of the Act and the prescribed forms for ending a tenancy. Alternatively, the Landlord may refer to the information available at the website of the RTB at the URL address listed below.

### Conclusion

I allow the Application and order that the Notice to End Tenancy is cancelled. The tenancy continues until ended in accordance with the Act.

I order that, if the Landlord seeks to end the tenancy, he complies with the requirements of the Act.

As the Tenant has been successful in the Application, I award the Tenant the filing fee of \$100.00 for the Application. Pursuant to section 72(2)(a) of the Act, I authorize the Tenant to withhold this amount on a one-time basis from his monthly rent on a one-time basis in satisfaction of this amount.

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: October 5, 2022

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Residential Tenancy Branch