



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, FFT**

### 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; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that she was not recording this dispute resolution hearing.

The Landlord personally served the One Month Notice on June 30, 2022. The Tenant confirmed receipt of the One Month Notice. I find that the One Month Notice was served on the Tenant on June 30, 2022 pursuant to Section 88(a) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on July 24, 2022 by Canada Post registered mail

(the “NoDRP package”). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Canada Post-Track a package website confirms delivery of the registered mail package. I find that the Landlord was deemed served with the NoDRP package five days after mailing them, on July 29, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. 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 Tenant testified that this tenancy began as a fixed term tenancy on February 1, 2017. The fixed term ended on February 1, 2018, then the tenancy continued on a month-to-month basis. Monthly rent is \$772.23. A security deposit of \$350.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The effective date of the One Month Notice was July 30, 2022.

The Landlord provided further details of the cause to end this tenancy as:

*This letter is to give you the reason for canceling our rental agreement. The reason being is that we have received by registered mail a complaint of you trying to break in to, #[suite #] suite door on June 8<sup>th</sup>. at 7:30 PM. It is unfortunate that our tenant in [suite #] has had to go to the RCMP. RCMP have advised him to get a protection order against you,*

The Tenant's application states that the "*Complainant is not being truthful in his statement or his allegations.*" The Tenant seeks to cancel the Landlord's One Month Notice.

### 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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

***Consequences of not attending the hearing:*** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

The Landlord did not attend the hearing and give evidence to prove grounds for ending the tenancy. The Tenant states the complainant against her was not being truthful. Based on this undisputed evidence, I find the Landlord has not proven cause to end the tenancy and I cancel the Landlord's One Month Notice. The tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

### Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application filing fee.

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: December 05, 2022

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Residential Tenancy Branch