



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, DRI-ARI-C, AAT, PSF, LRE, LAT, RPP, OLC, FFT

### Introduction

On October 12, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking to dispute an additional rent increase for capital expenditures pursuant to Sections 43(1)(b) and 43(3) of the *Act*, seeking access to the rental unit pursuant to Section 30 of the *Act*, seeking the provision of services or facilities pursuant to Section 62 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking authorization to change the locks pursuant to Section 31 of the *Act*, seeking a return of personal property pursuant to Section 65 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on December 2, 2022.

The Tenant attended the hearing, with K.K. attending as a translator for the Tenant; however, the Landlord did not attend at any point during the 30-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:30 AM. Only the Applicant and his representative dialed into the teleconference during this time. 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 I was the only other person who had called into this teleconference.

K.K. advised that the Landlord was served with the Tenant's Notice of Hearing and evidence package by registered mail on October 26, 2022 (the registered mail tracking number is noted on the first page of this Decision). She testified that this package was received by the Landlord on October 28, 2022. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant's Notice of Hearing package.

She then stated that the Tenant's digital evidence submitted was not served to the Landlord because these videos were actually sent to the Tenant by the Landlord. As well, she submitted that the Tenant's late evidence was not served to the Landlord because the Landlord already had it. Based on this undisputed testimony, I am satisfied that only the Tenant's documentary evidence served with the Notice of Hearing package will be accepted and considered when rendering this Decision. All other evidence will be excluded and not considered.

At the outset of the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Notice, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

K.K. advised that the tenancy started on July 10, 2015, that rent was currently established at \$1,300.00 per month, and that it was due on the first day of each month. As well, a security deposit of \$300.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

Furthermore, she submitted that the Notice was served to the Tenant on October 10, 2022, by hand. A copy of this Notice was provided as documentary evidence by the Tenant. The effective end date of the tenancy was noted on the Notice as October 30, 2022.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I find it important to note that the burden of proof is on the Landlord to substantiate the reasons for ending the tenancy. As the Landlord did not attend the hearing or present their evidence to justify why the Notice was served, I am not satisfied that the Landlord has established any grounds to substantiate service of the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause dated October 10, 2022, to be cancelled and of no force or effect. This tenancy continues 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: December 2, 2022

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Residential Tenancy Branch