



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant application 1: CNR OLC FFT

Tenant application 2: CNL FFT

Tenant application 3: CNC RR PSF FFT

### **Introduction**

This hearing dealt with three Applications for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied for the following:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
2. To cancel a 1 Month Notice to End Tenancy for Cause
3. To cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property

The original hearing was adjourned after 67 minutes as additional time was necessary to hear evidence regarding the 2 Month Notice. At the first hearing, the 10 Day Notice and the 1 Month Notice were both cancelled, which will be addressed below. All parties were affirmed and attending the reconvened hearing on January 24, 2023 were the tenant, their agent and the husband of the landlord, EN.

The landlord confirmed that they did not submit any documentary evidence for any of the three applications before me. The landlords confirmed that they were served with all three applications by the tenant and the tenant's documentary evidence. I find there are no service issues as a result.

### **Preliminary and Procedural Matter**

At the reconvened hearing on January 24, 2023, the landlord's spouse testified that the landlord has decided to sell the rental property and as a result requested to withdraw the 2 Month Notice, which the tenant agreed to. As a result, I find the 2 Month Notice is

no longer valid, and I will grant the filing fee for that application as the tenant had to dispute the 2 Month Notice or an order of possession could have been granted to the landlord without disputing that 2 Month Notice, which has not been withdrawn by mutual consent of the parties. The remainder of this decision will address the 10 Day Notice and 1 Month Notice as a result, and the associated filing fees for those two applications before me.

### Issues to be Decided

- Should the 10 Day Notice be cancelled?
- Should the 1 Month Notice be cancelled?
- Should the 2 Month Notice be cancelled?
- Is the tenant entitled to recover the cost of all three filing fees?

### Background and Evidence

A copy of the 10 Day Notice was submitted in evidence and is dated 2022/7/6 and does not include an effective vacancy date and is missing the address for service for the landlord. The 10 Day Notice was cancelled during the hearing as the parties were advised that the 10 Day Notice did not comply with section 52 of the Act, which I will address in further detail in my analysis below.

A copy of the 1 Month Notice was submitted in evidence. It is dated July 19, 2022 and contains an effective vacancy date of 03/09/2022. The tenant disputed the 1 Month Notice on the same day it was served, July 19, 2022. The 3 causes listed on the 1 Month Notice are listed as follows:

<input checked="" type="checkbox"/>	Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/>	significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/>	seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/>	put the landlord's property at significant risk

The Details of Cause(s) are listed as follows:

<b>Details of Cause(s):</b> Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
<b>Details of the Event(s):</b> On 28th June 8PM, I did the first regular inspection, and discussed about garbage classification because [REDACTED] refused to do garbage classification for a year since she moved in. Also she interrupted me several times for inspection, even after I gave her 24 hour notice. During that time, her boyfriend threatened me and threw a fork at me, kept yelling at me, and she closed the door, briefly restricting my personal freedom. Her boyfriend threatened to burn down my house. All above that I described, it is available to prove by police filed number: 22-[REDACTED] and videos I took on inspection date.

On 19th July 9:20PM, [REDACTED]s boyfriend suddenly pound on my door without my permission, I have two little kids and old person at home, their behaviours seriously risked the safety of my family. Thus I called police once again, the telephone operator could felt his behaviour was unsafe by phone because she can hear he kept hitting my door. She sent four police cars to my place in about 3minutes. This went on for about 15 minutes until the police arrived. One of the police took a look the Residential Tenancy Agreement I have, and according to what happened last night, he said I could apply for emergency efficiency move out notice. The second police filed number is 22 [REDACTED]

The tenant denied both accusations being made and stated that they did not throw a fork as claimed and did not pound on any door. The landlord failed to provide any video evidence referred to in the 1 Month Notice or call any witnesses.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**10 Day Notice** – Section 52 of the Act applies and states the following:

#### **Form and content of notice to end tenancy**

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 added]

Based on the above, I find the 10 Day Notice failed to include an effective vacancy date and also was not in the approved form as the landlord failed to complete the 10 Day Notice by failing to indicate a service address on the 10 Day Notice. Accordingly, I cancel the 10 Day Notice as I find it does not comply with section 52 of the Act and is not an effective notice as a result.

**1 Month Notice** - The 1 Month Notice has an effective vacancy date of 03/09/2022, which is over one month and benefits the tenant. The tenant disputed the 1 Month Notice on the same date it was issued, July 19, 2022, which is within the 10-day timeline provided for under section 47 of the Act to dispute a 1 Month Notice.

Once a 1 Month Notice is disputed, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid. The landlord did not submit any documentary evidence in support of the 1 Month Notice or call any witnesses. An allegation without supporting evidence to support that allegation, such as witness testimony or a statement from a witness is not sufficient evidence to prove a 1 Month Notice, especially when a tenant disputes the reasons alleged on the 1 Month Notice. At the very least, I would have expected the landlord to have submitted video evidence referred to on the 1 Month Notice or to call a witness or provide a police report, none of which the landlord has done.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the landlord has the onus of proof to prove that the 1 Month Notice is valid. Based on the above, I find the landlord has provided insufficient evidence to prove that the 1 Month Notice dated August 7, 2020 is valid. Therefore, **I cancel** the 1 Month Notice dated August 7, 2020 as the landlord has not met the burden of proof to prove that the 1 Month Notice is valid.

Furthermore, as the 2 Month Notice was withdrawn on January 24, 2023, I find the tenancy must continue. Therefore, I make the following order pursuant to section 62(3) of the Act.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

As all three applications by the tenant were successful, I grant the tenant the recovery of the \$100 filing fees for a total of **\$300** as there were three notices to cancel, hence the three applications. **I authorize** the tenant a one-time rent reduction in the amount of **\$300** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee, pursuant to sections 62(3) and 72 of the Act.

### Conclusion

The 10 Day Notice and 1 Month Notice are cancelled and are of no force or effect.

The 2 Month Notice was withdrawn by the landlord at the reconvened hearing, by consent of the tenant and is of no force or effect.

The tenant has been granted a one-time rent reduction of \$300 as indicated above, from a future month of rent.

This decision will be emailed to both parties.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 24, 2023

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Residential Tenancy Branch