



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDCT, OLC, FFT, OPC, FFL

### Introduction

This hearing was set to deal with cross applications. The tenant applied to cancel a One Month Notice to End Tenancy for Cause (“1 Month Notice”); orders for compliance and monetary compensation. The landlord applied for an Order of Possession for cause.

Both the landlord’s agent and the tenant appeared for the hearing. The parties were affirmed. The landlord had witnesses with her at the start of the hearing. The witnesses were excluded with instruction to wait to be called.

I have amended the style of cause to reflect the parties’ names in keeping with the tenancy agreement and the 1 Month Notice.

At the outset of the hearing, I explored service of hearing materials. The tenant sent his proceeding package to the landlord via registered mail on September 24, 2022. The landlord sent its proceeding package and evidence to the tenant via registered mail within three days of filing the landlord’s application.

The tenant served his evidence by placing it in the landlord’s mail slot on January 12, 2023. The landlord’s agent acknowledged receipt of the package on January 13, 2023 and pointed out it was served late.

I heard the tenant continues to occupy the rental unit and I determined the primary issue is to resolve is the fate of the tenancy. Accordingly, I proceed to hear the dispute concerning the 1 Month Notice and I severed the other remedies sought by the tenant in this single application, with leave to reapply, pursuant to Rule 2.3 and Rule 6.2 of the Rules of Procedure which provide:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

After the landlord presented evidence concerning the 1 Month Notice, I determined the landlord had not served a 1 Month Notice in the approved form and I declined to hear reasons for its issuance or evidence in support of its issuance. Accordingly, it was unnecessary to make any decision concerning service of the tenant's late evidence or call the landlord's witnesses.

I informed the parties that the landlord is at liberty to issue another 1 Month Notice to the tenant so as to serve him with a notice in the approved form and the tenant may chose to accept the end of the tenancy or file to dispute a subsequent notice to end tenancy served upon him.

Despite informing the parties that I would not be dealing with the other remedies sought by the tenant on his application, both parties tried to introduce oral evidence. I instructed the parties to cease and that I would not hear anything further. The landlord's agent became argumentative and hostile and did follow my instruction to cease. The teleconference call was immediately ended.

Should the parties find themselves in a future dispute resolution proceeding, the parties would be well served to be aware of Rule 6.10 of the Rules of Procedure which provide:

### **6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing**

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

#### Issue(s) to be Decided

1. Did the landlord serve the tenant with an enforceable 1 Month Notice?
2. If so, should the 1 Month Notice be upheld or cancelled?

#### Background and Evidence

The landlord submitted that the tenancy started on April 1, 2022 and the tenant is required to pay rent of \$1015.00 on the first day of every month.

On August 29, 2022 the subject 1 Month Notice was posted on the rental unit door. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The 1 Month Notice before me is an old two-page version of the 1 Month Notice published by the Residential Tenancy Branch in 2016 which has not been the approved form for a couple of years.

#### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid and enforceable notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

Section 52 of the Act provides requirements for giving a notice to end tenancy. As seen under section 52(e) a landlord's notice to end tenancy must be in the approved form, among other things to be effective. Below, I have reproduced section 52 of the Act (with my emphasis underlined):

**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.

The notice to end tenancy that is the subject of this proceeding was in an older two page version approved in 2016 and not in the current approved form. Therefore, I find the 1 Month Notice is not effective under section 52 of the Act and not enforceable even if the landlord has grounds for ending the tenancy for cause.

In light of the above, **I grant the tenant's request for cancellation of the 1 Month Notice dated August 29, 2022 and I dismiss the landlord's request for an Order of Possession.**

Since the tenant's application was successful, I award the tenant recovery of the \$100.00 filing fee he paid for his application. **The tenant is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.**

Since I did not hear or make any findings as to whether the landlord has cause to end the tenancy, **the landlord is at liberty to issue another 1 Month Notice to the tenant, but in the current approved form, if the landlord decides to pursue eviction.**

### Conclusion

The 1 Month Notice dated August 29, 2022 is not in the approved form and is unenforceable. The tenant's application for cancellation of the 1 Month Notice is granted and the landlord's application for an Order of Possession is dismissed for this reason.

The tenant is awarded recovery of the filing fee and is authorized to deduct \$100.00 from a subsequent month's rent to satisfy the award.

The landlord is at liberty to serve the tenant with another 1 Month Notice, in the approved form.

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: January 26, 2023

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Residential Tenancy Branch