



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **CNC-MT, 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 Section 47 of the Act;
2. More time to dispute the notice pursuant to Section 66 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant and his Advocate 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, his Advocate 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 and his Advocate testified that they were not recording this dispute resolution hearing.

The Tenant testified that he received the One Month Notice from the downstairs tenant on January 6, 2023. The Tenant and the downstairs tenant shared a mailbox, and the downstairs tenant collected the mail and did not forward the One Month Notice to the Tenant. The Tenant was advised by his Advocate to ask the downstairs tenant. I find that the One Month Notice was sufficiently served on the Tenant on January 6, 2023 pursuant to Section 71(2)(b) of the Act.

The Tenant's Advocate solemnly affirmed that he personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on January 15, 2023 at 3:00 p.m. (the "NoDRP package"). I find that the Landlord was served with the NoDRP package on January 15, 2023, in accordance with Section 89(1)(a) of the Act.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. Is the Tenant entitled to more time to dispute the notice?
3. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
4. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant confirmed that this oral tenancy began in June 2021. He does not have a formal written tenancy agreement with the Landlord. Monthly rent is \$1,200.00 plus utilities each month. No security deposit or pet damage deposit was required to be paid to the Landlord.

The One Month Notice stated the reasons the Landlord was ending the tenancy was because the Tenant is repeatedly late paying rent; there are an unreasonable number of occupants in a rental unit; the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; the tenant has not done required repairs of damage to the unit; the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so; the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent; and, the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property. The effective date of the One Month Notice was January 11, 2022.

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

*A series of breeches in Tenancy Contract.*

The Tenant has done handyman work for the Landlord in the past, but on December 11, 2022, him and the Landlord had an argument. The Tenant testified that the Landlord told him that “*he is not kicking us out.*” The Tenant seeks to cancel the 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.*

I find the One Month Notice was served on the Tenant on January 6, 2023. The Tenant applied for dispute resolution on January 10, 2023 within ten days after receipt of the One Month Notice.

The Landlord’s One Month Notice did not include the correct effective date for the notice, and the grounds for ending the tenancy were inadequate. Section 52 of the Act states:

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

- 52** *In order to be effective, a notice to end a tenancy must 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,*
- (e) *(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*
- (f) *when given by a landlord, be in the approved form. (emphasis mine)*

The Landlord did not attend this hearing despite being served with the Tenant's NoDRP package. It is the Landlord's burden to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based. The Tenant uploaded a copy of the One Month Notice and I find the effective date was incorrect, and the grounds for ending the tenancy were inadequate. Neither of these deficiencies could be addressed at the hearing as the Landlord did not attend.

I find that the Landlord's One Month Notice did not comply with the form and content requirements of Section 52 of the Act. Accordingly, I cancel the Landlord's One Month Notice and the tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in his claim, he 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 next 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 his 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: February 23, 2023

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Residential Tenancy Branch