



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy For Cause (the "One Month Notice"), pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file. The landlord kept insisting that the tenants did not serve him with an evidence package as he did not appear to understand that the tenants are not required to serve evidence, especially since the onus to establish the grounds for issuing a Notice to End Tenancy rests with the landlord.

The tenant's application was filed within the time period required under the Act.

### Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

The rental unit is one half of a small duplex. The tenancy began September 1, 2018.

The landlord served the tenant with a One Month Notice on September 12, 2022. The form used by the landlord was from 2003 and there have been various updates to the

form since. For the purposes of this hearing, I accepted the older version form but the landlord is cautioned to utilize an updated approved form in the future.

The landlord issued the Notice on the following grounds:

- 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,
  - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
  - put the landlord's property at significant risk.

The landlord submits the tenant was given the One Month Notice due to the tenant repeatedly removing the smoke alarm. The landlord submits that this puts other occupants of the duplex property and the landlord's property at significant risk. The landlord submits he has had to replace the smoke alarm three times. The landlord submits the tenant just took the smoke alarm down without informing him there was an issue with it.

The tenant's advocate submits that the tenant works shift work at the hospital and the smoke alarm was faulty causing it to go off at all hours without any issue; therefore, she took it down. The tenant's advocate acknowledged that the tenant should immediately inform the landlord next time there is an issue rather than taking the smoke alarm down. The tenant's advocate submits the landlord was informed in the past which is why the landlord has replaced it before. The tenant's advocate submits the tenancy has been in place for over 4 years and there have never been any issues or warnings issued to the tenant and she just suddenly received the One Month Notice.

### Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

While I acknowledge that the tenant's removal of the smoke alarm without informing the landlord does put the landlord's property at significant risk, I find there is insufficient

evidence that the tenant did so arbitrarily. The landlord's own testimony was that he has replaced the smoke alarm three times so I can only assume that the smoke alarm was removed due to it being faulty. The landlord did not submit any evidence demonstrating that the removed smoke alarms were in working order and had just been removed for another reason. I also find that since the smoke alarm has been replaced three times in the past, the tenant must have in the past advised the landlord that there was an issue with it. Further, as this tenancy has been in place for over four years, without issue, I find that at the very least the landlord should have issued a cautionary notice to the tenant advising her that removing the smoke alarm without first advising the landlord of any repair issues could put her tenancy at risk.

Accordingly, I find the landlord presented insufficient evidence to justify that he had cause to issue the One Month Notice and it is hereby cancelled.

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 from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

### Conclusion

I allow the tenant's application to cancel the landlord's One Month Notice, dated September 12, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is 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: February 03, 2023

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Residential Tenancy Branch