



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding PONICH PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, DRI, FFT

### Introduction

On September 30, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated September 30, 2022, to dispute a rent increase that is above the amount allowed by law, and to recover the filing fee for their application. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”), and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters - Related Issues

I have reviewed the Tenant’s application, and I note that they have applied to cancel a Notice to end tenancy as well as another issue. I find that this other issue is not related to the Tenant’s request to cancel the Notice. As the other matter does not relate directly

to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

**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.

Therefore, I am dismissing with leave to reapply, the Tenant's claims to dispute a rent increase that is above the amount allowed by law.

I will proceed with this hearing on the Tenant's claim to cancel the One-Month Notice and recover the filing fee for this application.

Issues to be Decided

- Should the Notice dated September 30, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on August 1, 2018, as a month-to-month tenancy. Rent in the amount of \$870.00 is to be paid by the first day of each month and the Landlord collected a security deposit of \$435.00. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on September 30, 2022, by personal service to the Tenant. The reason for the Notice was checked off as follows:

- *Breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so*

The Landlord testified that they served the Notice to end tenancy to the Tenant as the Tenant has moved an additional occupant into the rental unit without the Landlord's consent. The Landlord testified that they had served the Tenant with three letters, giving them the opportunity to add the additional occupant to the tenancy agreement for an increased rent amount of \$300.00 per month. The Landlord testified that the Tenant refused to sign the agreement, pay the increased rent amount, or remove the additional occupant, so they issued the Notice to end the tenancy. The Landlord submitted three letters dated, August 16, 2022, August 24, 2022, and August 30, 2022, into documentary evidence.

The Landlord submitted that the original tenancy agreement was for only one occupant of the rental unit and that the material term the Tenant breached was adding the additional occupant.

The Tenant submitted that they did have written consent from the Landlord to move their boyfriend into the rental unit. The Tenant testified that they spoke to the Landlord in March 2020, requesting permission to move their boyfriend into the rental unit. The Tenant testified that the Landlord agreed to their boyfriend moving in for a rent increase of \$30.00 per month. The Tenant submitted a letter from the Landlord dated March 23, 2020, into documentary evidence.

The Tenant testified that their boyfriend moved in on April 1, 2020, and that they have paid the extra \$30.00 each month as required. The Tenant testified that they were surprised to get the Landlord's letter, dated August 16, 2022, that demanded they agreed to a \$300.00 rent increase to add their boyfriend to the tenancy.

The Landlord submitted that the March 23, 2020, letter was just a temporary agreement and now that they understand the Tenant's boyfriend will be living their long term, they need to formally add them to the tenancy agreement. The Landlord submitted that the letter clearly states that the agreement was "temporary" and that the \$30.00 was a guest fee and not rent.

The Landlord was advised of section 9 of the *Residential Tenancy Regulations* (the "*Regulations*") which prohibited guest fees and asked why they had used this term. The landlord responded that they understood guest fees are prohibited under the *Act*, but that their use of this term was in relation to the Tenant's boyfriend living in the rental unit not just visiting. The Landlord was cautioned regarding the use of the term "guest fee" as guest fees are prohibited under the *Act*.

The Tenant submitted that the March 23, 2020, letter was in their mind a formal addition of their boyfriend as an occupant under their tenancy. The Tenant testified that the Landlord had told them at the time that the use of the word “temporary” was only because they did not want the Tenant’s boyfriend to claim the unit as their own if the Tenant were to leave.

The Tenant also submitted that they believe that the Landlord's decision to serve them with a Notice to end the tenancy was in retaliation to the Tenant serving the Landlords, in early August 2022, with notice of a personal injury claim they were making against them.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on September 30, 2022. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. Section 47 of the *Act* states the following:

#### ***Landlord's notice: cause***

*47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

*(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit by that date.*

Pursuant to section 47, I find the Tenant had until October 10, 2022, to file their application to dispute this Notice. I have reviewed the Tenant’s application for dispute resolution, and I find that the Tenant filed their application on September 30, 2022, within the legislated timeline.

In this case, the Landlord has submitted that the Tenant breached their tenancy agreement when they moved in a long-term occupant to the rental unit without the Landlord’s written consent.

The Tenant has submitted that they did have the written consent of the Landlord to move their boyfriend into the rental unit, for an agreed to increase in rent of \$30.00 per month, which they have been paying since April 2020.

The Landlord responded that the March 23, 2020, agreement letter only granted the Tenant temporary permission to move their boyfriend into the rental unit and that the Tenant had refused to sign the Landlord's offered amendment to the tenancy agreement to add the Tenant's boyfriend to the tenancy long-term, and that this refusal constituted a breach of a material term.

After reviewing the documentary evidence and the testimony submitted by these parties during these proceedings, I find that the crux of the dispute before me is whether or not the March 23, 2020, letter created a short-term approval or a long-term agreement between these parties to add the Tenant's boyfriend to this tenancy.

I find that the parties, in this case, offered conflicting verbal testimony regarding the intent of the March 23, 2020, letter. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As stated above, it is the Landlord who holds the burden of proof in these proceedings to prove that their Notice was issued in accordance with the *Act*.

I have reviewed the March 23, 2020, letter submitted into evidence and noted the use of the term "temporarily." I have reviewed this letter several times, and I find that the Landlord failed to define what the temporary period was in this letter. Additionally, I must also consider the fact that the Landlord permitted this "temporary" agreement for occupation of the rental unit, by the Tenant's boyfriend, to go on for over 2 years before they gave the Tenant an indication, specifically the August 16, 2022 letter, to the Tenant that they would be required to make a new agreement with this Landlord for the continued occupation of the rental unit by their boyfriend.

Overall, I find that the use of the term "temporarily." in the March 23, 2020, letter to be vague, and unclear. Where I can understand the allure of including an all-encompassing, nonspecific, and catch-all term in a contract or agreement, I can not overlook the legal rule of *Contra Proferentem*.

Contra Proferentem is a rule used in the legal system when interpreting contracts, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause.

I accept the Landlord's testimony that they had written the March 23, 2020, letter allowing the Tenant's boyfriend to move into the rental unit. As it was the Landlord who was the drafter of this document, I find that I must settle the ambiguous nature of the term "temporarily" against the Landlord.

Consequently, I accept the Tenant's testimony that it was their interpretation of the March 23, 2020, letter from the Landlord, that this was an agreement by the Landlord to allow the Tenant to move in an additional occupant to the rental unit, under the Tenant's tenancy agreement for an agreed-upon amount of an additional \$30.00 a month in rent.

Additionally, I also accept the testimony of the Landlord that they knew that the Tenant's boyfriend was living with the Tenant in the rental unit and that they did collect the agreed to \$30.00 a month for over two years. I find that the actions of the Landlord of allow the Tenant to move their boyfriend into the rental unit, and collecting the additional occupant charge of \$30.00 a month, combined with allowing the occupant to reside in the rental unit for this fee for 2 years has created a legally binding agreement between these parties to add the Tenant's boyfriend to this tenancy as an occupant.

In this case, the Landlord willingly entered into an agreement with the Tenant, accepted regular payments based on the terms of that agreement and then, 846 days later, demanded that the Tenant agree to change the terms of that agreement, claiming that the original offer was only temporary. Specific to this action, I find these dealings of the Landlord to be unreasonable and duplicitous.

From the testimony, I have heard and the evidence before me, I find that the Tenant entered into good faith negotiations with the Landlord to add their boyfriend to their tenancy agreement, then acted on that good faith agreement, by paying the negotiated amount for over 2 years.

Consequently, I find that the length of time the Landlord allowed the Tenant's boyfriend to reside in the rental unit, combined with the acceptance of an additional monthly rent charge, in the amount of \$30.00, created an amendment to the original tenancy which added the Tenant's boyfriend to this tenancy agreement as a legal occupant of the rental unit.

Accordingly, I find that the Tenant did not breach a term of their Tenancy Agreement when they moved their boyfriend into the rental unit as they had obtained the Landlord's written consent to do so, as required under this *Act*.

As the Tenant's boyfriend is a legal occupant of the rental unit, I find that the Landlord may not use the occupation of the Tenant's boyfriend in the rental unit as grounds to end this tenancy.

Therefore, I grant the Tenants' application to cancel the Notice dated September 30, 2022, and I find the Notice is of no force or effect.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their application. The Tenant is granted permission to take a one-time deduction of \$100.00 from their next month's rent in full satisfaction of this awarded amount.

### Conclusion

I grant the Tenant's application, and I find the Notice dated September 30, 2022, is of no effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I grant the Tenants permission to take a one-time deduction of \$100.00 from their next month's rent.

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 22, 2023

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Residential Tenancy Branch