



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated October 22, 2022 ("One Month Notice"); and to recover their \$100.00 Application filing fee.

The Tenant, K.K., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing, the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with these documents and her evidence by Canada Post registered mail sent on November 23, 2022. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

### Preliminary and Procedural Matters

The Tenants provided their email address in the Application and confirmed it in the hearing. The Tenants provided a mailing address for the Landlord. The Tenant confirmed her understanding that the Decision would be emailed to the Tenants and mailed to the Landlord.

### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

### Background and Evidence

The Tenant confirmed that the tenancy began on or about March 2, 2022, with a monthly rent of \$1,500.00, due on the first day of each month. She confirmed that the Tenants paid the Landlord a security deposit of \$750.00, and no pet damage deposit.

The Tenant confirmed the details of the One Month Notice, saying that it was signed and dated October 31, 2022, it has the rental unit address, it was served by being left under a pumpkin on her front porch on October 31, 2022. The One Month Notice had an effective vacancy date of November 30, 2022, and it was served on the grounds that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

### Analysis

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

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession (i) if I dismiss the tenant's application, and (ii) if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Since the Landlord failed to attend the hearing to present the merits of the One Month Notice, I find that the Landlord has failed to meet his burden of proof on a balance of probabilities. I, therefore, grant the Tenants' request, and I **cancel the One Month Notice** and find it has no force or effect, pursuant to section 62 of the Act.

Given their success in this matter, I award the Tenants with recovery of their \$100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act. **I authorize the Tenants to deduct \$100.00 from one upcoming rent payment** in complete satisfaction with this award, pursuant to section 72 of the Act.

### Conclusion

The Tenants are successful in their Application, as the Landlord failed to attend the hearing to present the merits of the One Month Notice. The **One Month Notice is cancelled** and is of no force or effect.

The Tenants are awarded recovery of their **\$100.00** Application filing fee from the Landlord. **The Tenants are authorized to deduct \$100.00 from one upcoming rent payment** in complete satisfaction with this award.

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: March 17, 2023

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Residential Tenancy Branch