



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, MNDCT, DRI, ERP, RP, LRE, OLC, FFT

### Introduction

On November 9, 2022, the Tenants filed 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 November 3, 2022, for a monetary order compensation for my monetary loss or other money owed, to dispute a rent increase that is above the amount allowed by law, for an order that the landlord to make emergency repairs for health or safety reasons, for an order that the landlord made regular repairs to the unit, site or property, for an order for the Landlord to comply with the *Act*, to suspend or set conditions on the landlord’s right to enter the rental unit or site, and to recover the filing fee for this application. The matter was set for a conference call.

The Tenants attended the hearing and were each affirmed to be truthful in their testimony. As the Landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that the Application for Dispute Resolution and Notice of Hearing documents had been served to the Landlord by Canada Post Registered mail, sent on November 25, 2022, a Canada post tracking number was provided as evidence of service. I find that the Landlord had been duly served in accordance with sections 89 and 90 of the *Act*.

The Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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. Both parties were advised of section 6.6 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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 Matter – *Related Issues*

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenants' request to cancel the Notice. As these other matters do 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.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claim for a monetary order compensation for my monetary loss or other money owed, to dispute a rent increase that is above the amount allowed by law, for an order that the landlord to make emergency repairs for health or safety reasons, for an order that the landlord made regular repairs to the unit, site or property, for an order for the Landlord to comply with the Act, to suspend or set conditions on the landlord's right to enter the rental unit or site.

I will proceed with this hearing on the Tenant's remaining claim before me, to cancel the Notice and recover the filing fee.

### Issues to be Decided

- Should the Notice issued on November 3, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the recovery of the filing fee of their application?

### 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 Tenants submitted that they received the Notice to end tenancy on November 3, 2022, when they found a copy posted to the front door of their rental unit. The Tenants submitted a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant or a person permitted on the property by the tenant has:*
  - *Significantly interfered with or unreasonably disturbed another occupant or the landlord*
  - *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*
  - *Put the landlord's property at significant risk*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property*
- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord*

The Tenants testified that the claims the Landlord has made on this Notice were all fabricated. The Tenants are requesting to cancel the Notice as the Notice was not issued in accordance with the *Act*.

### Analysis

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

In a case where a tenant has applied to cancel a Notice, Rule 11.1 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.

This matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time were the Tenants.

Since the Landlord did not attend the hearing by 11:11 a.m. to present any evidence or submission in support of the Notice, and the burden is on the landlord to prove the Notice was issued for the reasons stated. I find that the Landlord has failed to show cause to end the tenancy.

Therefore, I grant the Tenants application to cancel the Notice dated November 3, 2022, and the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

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

Conclusion

The Tenants' application to cancel the Notice, dated November 3, 2022, is granted. The tenancy will continue until legally 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: March 21, 2023

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Residential Tenancy Branch