



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the *Residential Tenancy Act* (the Act) on January 30, 2023, seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 am on May 23, 2023, and was attended by the Tenant and the Landlord, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing. As the Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) and stated there were no concerns with the service date or method, the hearing proceeded as scheduled.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that personal recordings of the proceeding were prohibited and confirmed that they were not recording the proceedings.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter pursuant to the Residential Tenancy Branch Rules of

Procedure (Rules of Procedure). However, I refer only to the relevant facts and issues in this decision.

### Preliminary Matters

The Tenant stated that they had not served any evidence on the Landlord or received any evidence from the Landlord in relation to this hearing. The Landlord acknowledged that although they uploaded documentary evidence for my consideration, they did not serve this evidence on the Tenant as required by the Rules of Procedure as they were unaware of the requirement to do so.

As the Tenant has not been served with the documentary evidence before me from the Landlord as required, I find that it would be a breach of the Rules of Procedure as well as administratively unfair to the Tenant to accept this documentary evidence for consideration. I have therefore excluded the Landlord's documentary evidence from consideration.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the Act?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The parties agreed that the Tenant was served with the One Month Notice on January 19, 2023, and Residential Tenancy Branch (Branch) records show that the Tenant sought cancellation of the One Month Notice by filing the Application on January 30, 2023. The One Month Notice is signed and dated January 19, 2023, has an effective date of January 19, 2023, and lists the following grounds for ending the tenancy:

- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- The tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the Landlord gave written notice to do so.

The parties disputed whether the property is currently unsightly and whether the municipality has issued any recent notices for the property to be cleaned up. The Tenant stated that the last notice received was in September of last year and in relation to a garbage can that was rummaged through by racoons, causing a mess. The Tenant stated that it was immediately cleaned up and no further action from the municipality was required. The Landlord disagreed, stating that many notices have been issued by the municipality over the course of the tenancy regarding the unsightliness of the property. The Landlord stated that the last notice was received on January 13, 2023, and was forwarded to the Tenant. The Landlord stated that the municipality is going to enter the property and have it cleaned up, at the Landlord's expense, if it is not brought into compliance. The Landlord stated that this most recent notice, as well as the previous notices and the Tenant's repeated failure to keep the property clean, have resulted in the issuance of the One Month Notice.

The Tenant denied receipt of the alleged notice from the municipality in January of 2023, stating that if the Landlord has received such a notice, they are unaware of it. The Tenant also stated that they have always complied with notices from the municipality to clean up the property, and had they received such a notice in January, they would have complied.

### Analysis

I find that the Tenant was served with the One Month Notice on January 19, 2023, the date they acknowledge receiving it. I am also satisfied that the Tenant disputed the One Month Notice in compliance with section 47(4) of the Act. Although the Tenant disputed the One Month Notice on the 11<sup>th</sup> day, as the 10<sup>th</sup> day was a day in which the office is not open, I find that the Tenant was entitled to file the Application seeking cancellation of the One Month Notice the next business day, which was Monday January 30, 2023, in accordance with the *Interpretation Act*.

The ending of a tenancy is a serious matter and when a tenant disputes a notice to end tenancy, the landlord bears the burden to prove they had sufficient cause under the Act to issue the notice. Both parties provided contradictory affirmed testimony and aside from the One Month Notice, there was no documentary evidence before me for consideration in relation to the reasons given by the Landlord for ending the tenancy in the One Month Notice.

I therefore find that the Landlord has failed to establish, on a balance of probabilities, that they have cause under section 47 of the *Act* to end the tenancy and I therefore order that the One Month Notice dated January 19, 2023, is cancelled and of no force or effect. As a result, the tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72(1) of the *Act*, I also find that the Tenant is entitled to recovery of the \$100.00 filing fee, which I authorize them to deduct from the next months rent pursuant to section 72(2)(a) of the *Act*.

### Conclusion

I grant the Tenant's Application and order that the One Month Notice dated January 19, 2023, is cancelled and of no force or affect.

Pursuant to sections 72(1) and 72(2)(a) of the *Act*, the Tenant is permitted to withhold \$100.00 from the next months rent payable under the tenancy agreement for recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: May 24, 2023

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Residential Tenancy Branch