



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding LEXINGTON ENTERPRISES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord and recovery of the filing fee.

The tenant, JH, and her agent attended the hearing; however, the landlord did not attend. Both attendees were affirmed.

The tenant submitted signed, documentary evidence with the tracking number showing that they served the landlord with the tenants' application for dispute resolution, evidence, and notice of hearing (application package) by registered mail on April 4, 2023.

Based on these submissions, I find the landlord was served notice of this hearing and the tenants' application in a manner complying with section 89(1) of the Act.

The tenant and agent were provided the opportunity to present their evidence orally and make submissions to me.

I have 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.

### Preliminary and Procedural Matters-

Although they believed the complete copy of the Notice was filed in evidence, the 2<sup>nd</sup> page of the 3 page Notice was missing. The tenant was allowed to read from the 2<sup>nd</sup> page and they were allowed to upload the missing document after the hearing. I note that shortly after the hearing, the complete copy was received, which listed the reasons as read in the hearing.

### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice and recovery of the filing fee?

### Background and Evidence

The tenant submitted that the tenancy began about 9 years earlier and that current monthly rent is \$959. The tenants' additional evidence showed a partial copy of a written tenancy agreement and documents showing the landlord's notice to the tenant where the landlord informed the tenant they were not renewing the lease.

The Notice filed in evidence was dated March 28, 2023, listing a move-out effective date of April 30, 2023.

The tenant submitted that the landlord served the Notice by putting it under the door, on March 28, 2023.

The tenant filed their application in dispute of the Notice on March 31, 2023.

The causes listed on the 1 Month Notice are:

1. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
2. Tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.
3. Tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to damage the landlord's property.
4. Tenant or a person permitted on the residential 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 residential property.

5. Tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.
6. Breach of a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The tenant denied the causes listed on the Notice and said they did not even understand to what the landlord was referring.

### Analysis

In a case where a tenant has applied to cancel a Notice to end a tenancy, Rule 7.18 of the Rules states the landlord has the onus of proof.

In this case, the Notice was issued pursuant to section 47(1) and I find that the tenants disputed the Notice within the timeframe required under the Act.

In the absence of, or any evidence from, the landlord to support the reasons listed on the 1 Month Notice, I find there is insufficient evidence to uphold the 1 Month Notice.

I also additionally find the landlord failed to provide the required details of the Notice on the Details of Causes portion of the Notice, as to specific times, dates, names etc.

As a result of the above, I therefore **ORDER** that the Notice dated March 28, 2023, is **cancelled**.

**I ORDER** the tenancy continues until it may otherwise legally end under the Act.

For the above reasons, I grant the tenants' application. As the tenants' application had merit, I grant the tenants the recovery of the \$100 filing fee. **I authorize** the tenants a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenants should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

**Cautions to the landlord –**

I inform the landlord that they may not legally end a tenancy under the Residential Tenancy Act by issuing the tenant a notice of non-renewal. The evidence shows that this tenancy has now converted to a month-to-month tenancy and the landlord is ordered to refrain from serving notices of non-renewal in the future.

### Conclusion

The tenants' application seeking cancellation of the landlord's Notice and recovery of the filing fee is granted.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 10, 2023

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Residential Tenancy Branch