



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SHILOH HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on May 19, 2023 seeking a cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) the Landlord served to them. They also seek the Landlord’s compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 11, 2023. In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions.

The Tenant attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The Landlord did not attend the telephone conference call hearing.

### Preliminary Matter – Tenant service of the Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. This means the Tenant must provide proof that the document has been served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

In the hearing, the Tenant set out that they served the Notice of Dispute Resolution Proceeding to the Landlord at the Landlord’s established address for service which is the Landlord’s business office. This is the address for service the Landlord provided on the One-Month Notice. The Tenant sent registered mail to that address after receiving the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. The

Tenant in the hearing read verbatim from the email the Landlord sent to them on May 26 confirming they received this document.

I accept this evidence from the Tenant, I give weight to this evidence and find the Tenant credible that they served the Landlord the Notice of Dispute Resolution Proceeding in a manner that is authorized by s. 89(1)(c) of the *Act*. I find as fact that the Landlord was aware and opted not to attend the hearing; I proceeded with the hearing with the Landlord not in attendance.

### Issue(s) to be Decided

Is the Tenant entitled to an order that the Landlord cancel the One-Month Notice?

If unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, as per s. 55 of the *Act*?

Is the Landlord obligated to comply with the *Act* and/or the tenancy agreement?

Is the Tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

In the hearing the Tenant described this tenancy that was ongoing since approximately 2012. They currently pay \$582 in rent per month. They remain in the rental unit as of the date of this hearing.

The Tenant described the situation with their family member that caused damage at the rental unit. This is due to that family member's health which has since been designated as a person-with-disability. The Tenant explained that they are receiving support for this family member.

The Tenant provided that they were repairing the damaged property as required, and as they are able to do so financially. The Tenant had drywall repaired and ensured that another family member knows how to make such repairs.

The Tenant provided a copy of the One-Month Notice signed by the Landlord on April 28, 2023. This set the end-of-tenancy date for June 1, 2023.

The Landlord provided the following reasons on page 2 of the document:

- Tenant or a person permitted on the property by the tenant has
  - put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit. . .

The Landlord provided the following detail on the document:

The townhouse has been damaged in the following ways; multiple holes in drywall in every room, halls, and stairwells. Doors broken beyond repair, vinyl flooring ripped up. Carpets soiled beyond cleaning, multiple broken windows. The townhouse has basically become uninhabitable for safety reasons.

Regarding the windows, the Tenant provided that they remain broken. This is a concern with the oncoming cooler weather and rainy season. The Tenant presented that they spoke to the building's handyman who informed the Tenant that the Landlord's instruction was to provide no repairs to the rental unit until the Tenant had moved out. This conversation, as the Tenant recalled, was in late May or early June, and they recorded that conversation. The Tenant is unable at this time to pay for the cost of replacement windows on their own.

### Analysis

The *Act* s. 47 provides that a landlord may end a tenancy by giving a One-Month Notice if one or more of the following reasons – listed as (a) through (i) – applies in the situation.

When a landlord issues a One-Month Notice and a tenant applies to dispute the matter, that landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In this case, the Landlord served the One-Month Notice pursuant to s. 47. I accept that the Landlord served this document to the Tenant as required on April 28, 2023. The Tenant filed their Application on May 19, 2023

When a landlord issues a Two Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In the absence of the Landlord or any evidence from the Landlord to support the reason listed in the One-Month Notice, I cancel the One-Month Notice for lack of proof as to the reasons indicated therein.

For these reasons, I order the One-Month Notice to be cancelled. The tenancy continues until it may otherwise legally end under the *Act*.

The Tenant also presented that the windows remain broken after the damage by their own family member. I find the Tenant forthright in admitting to the issue of damage; however, their immediate concern is having adequate windows in place that provide shelter and security for them.

The *Act* s. 32 mandates that a landlord must provide and maintain residential property in a state of repair that complies with health, safety, and housing standards required by law.

I find s. 32 applies in the present scenario: I so order the Landlord to complete repairs of the windows in question for the Tenant's own well-being, in line with the rationale for s. 32 of the *Act*. The Landlord shall seek compensation for damage as required; however, the safety and health standards for the Tenant are paramount in this situation. I order the Landlord to complete repairs on the windows no later than September 30, 2023. The Landlord and Tenant must reach an agreement on payment of the damage caused by the Tenant's family member at that time.

I find it was necessary for the Tenant to make this Application to resolve the matters herein; therefore, I find the Tenant is eligible for reimbursement of the Application filing fee. I authorize the Tenant to withhold the amount of \$100 from one future rent payment, as per s. 72(2)(a) of the *Act*.

### Conclusion

For the reasons above, I order the One-Month Notice issued on April 28, 2023 is cancelled and the tenancy remains in full force and effect.

I order the Landlord to complete repairs on the windows as needed to comply with s. 32 of the *Act*. The Landlord must complete repairs of the windows no later than September 30, 2023.

I make this decision on the Authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: September 11, 2023

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Residential Tenancy Branch