



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT, OPC, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On September 19, 2023, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 27, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with A.P. attending as her agent. The Tenant advised that her legal name was only her first name and that LNU stood for Last Name Unknown. Despite this, A.P. wanted the Style of Cause to reflect that LNU was her last name.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited, and they were informed to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of the respective parties' Notice of Hearing and evidence packages was discussed, and there were no issues with service. As such, I have accepted the Tenants' evidence and will consider it when rendering this Decision. The Landlord did not submit any documentary evidence for consideration on this file.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started as an unwritten tenancy agreement on October 1, 2021, that the rent was currently established at an amount of \$1,500.00 per month, and that it was due on the first day of each month. A security deposit of \$700.00 was also paid. The Landlord was cautioned that a written tenancy agreement must be completed in accordance with the *Act*.

All parties also agreed that the Notice was served to the Tenant on September 15, 2023, by hand. The Notice was served because the "Tenant has allowed an unreasonable number of occupants in the unit/site/property/park" and because the Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk." The effective end date of the tenancy was noted as October 15, 2023, on the Notice. However, as rent was due on the first day of each month, this

date is incorrect and will automatically self-correct to October 31, 2023, as per Section 53 of the *Act*.

A.P. advised that the rental unit was a two-bedroom suite that was rented to the Tenants and their child; however, there are now three other adults living there as well. She testified that the Tenant solemnly affirmed that these three extra adults were living in the rental unit, as early as August 2022, at a previous Dispute Resolution Proceeding on September 15, 2023 (the relevant file number is noted on the first page of this Decision). She stated that there was no written warning given to the Tenants about these extra occupants, but she did warn the Tenants verbally in May 2023 that this number of occupants is unreasonable. However, she did not have any proof of this conversation.

The Tenant acknowledged that these additional adults were living in the rental unit; however, she denied that she was ever warned to rectify this issue by the Landlord.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, given that the Tenant acknowledged that the Notice was for the rental unit for which she resided despite this not being noted on the Notice correctly, I am satisfied that the Notice meets all of the requirements of Section 55 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***Landlord's notice: cause***

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(c) *there are an unreasonable of occupants in a rental unit;*

- (d) *the tenant or a person permitted on the residential property by the tenant has*
  - (iii) *put the landlord's property at significant risk.*

Regarding the validity of the reasons indicated on the Notice, I find it important to note that the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. However, in this case, there is no documentary evidence that was submitted for consideration by the Landlord.

As well, I note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Tenant has three additional adults living with her, her husband, and her child in the two-bedroom rental unit. While A.P. testified that she did warn the Tenants verbally that these additional occupants were unreasonable and that they were to be removed, she did not have any proof of doing so.

While it is entirely possible that there may be an unreasonable number of occupants in the rental unit, in my view, the Tenants should be warned that this is an issue first, and be given an opportunity to correct this matter. As there is no evidence to substantiate that the Landlord warned the Tenants prior to service of the Notice, I do find that the Landlord has established the grounds to serve the Notice. Therefore, I find that the Notice is cancelled and of no force and effect.

However, I caution the Tenants that should the Landlord warn them in writing that there are an unreasonable number of occupants residing in the rental unit, the Tenants will have a choice to either comply by whatever timeframe is stipulated by the Landlord, or refuse to comply and risk getting another One Month Notice to End Tenancy for Cause. It is entirely possible that the number of occupants living in the rental unit may be determined to be unreasonable in a future Dispute Resolution Proceeding.

As the Tenants were successful in their application, I find that the Tenants are entitled

to recover the \$100.00 filing fee paid for this application. Under Section 72 of the *Act*, the Tenants are permitted to withhold this amount from the next month's rent.

As the Landlord was not successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause dated September 15, 2023, is cancelled and of no force or effect.

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: December 22, 2023

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Residential Tenancy Branch