



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, LRE, FFT

### Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants sought orders

1. cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47(4) of the Act;
2. for the landlord to comply with the Act, regulation, or the tenancy agreement;
3. to restrict or suspend the landlord's right to enter the rental unit; and
4. for compensation for recovery of the filing fee.

A dispute resolution hearing was convened on January 14, 2019, and the landlord, his property manager, and all the tenants attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of the service of evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

### Preliminary Issue: The Notice and Compliance with Section 52 of the Act

The landlord and his employee testified that the Notice was issued and served in-person on the tenants on November 30, 2018. The employee testified that the Notice was served by a third party; the employee told me the first name of the third party but not the last.

The tenants submitted a copy of page one of the Notice, but not page two, into

evidence. On the bottom of page two, the tenants had handwritten the statement “\* Did not receive page 2”. I asked the tenants about this, and the tenants testified that they were handed an envelope by a third party (they did not know who this was) and in the envelope was page one of the Notice, and an additional Schedule of Parties document, but not page two of the Notice. The landlord’s employee disputed this and said that, “no, they got both pages of the Notice.”

A one month notice to end tenancy may be issued by a landlord under section 47, and section 47(3) of this section states that “A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

Section 52 of the Act reads as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

According to the tenants, as described both during their oral testimony and as written on page one of the submitted Notice, the landlord only served page one of the notice. They did not receive page two of the notice, which would have included the grounds for ending the tenancy, as required by section 52(d) of the Act.

While the landlord’s employee disputes that they only received page one of the Notice, they did not provide any additional documentary evidence to prove that page two of the Notice was, in fact, served. And, the only other individual who may have been able to verify that both pages of the Notice were, in fact, served on the tenants was the third party who was not in attendance. The onus is on the landlord to establish that the Notice served complies with section 52 of the Act.

When two parties to a dispute provide equally reasonable 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. In this case, I find that the landlord has failed to provide any evidence over and above their testimony proving that the Notice complied with section 52 in that page two of the Notice—on which the grounds for eviction are included—was served on the tenants.

As such, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Notice did not comply with sections 47(3) and 52 of the Act.

Therefore, given that I find this to be an ineffective notice under the Act, I order that the Notice issued on November 30, 2018, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

I make no findings of fact or law in respect of the grounds on which the Notice may have been issued.

#### Issues to be Decided

1. Are the tenants entitled to an order requiring the landlord to comply with the Act, regulations, or the tenancy agreement?
2. Are the tenants entitled to an order restricting or suspending the landlord's right to enter the rental property?
3. Are the tenants entitled to compensation for recovery of the filing fee?

#### Background and Evidence

As the bulk of the parties' testimony had to do with the Notice, I will only review and consider the evidence as it pertains to the tenants' application for the two orders relating to landlord's right of entry and to his compliance with the Act.

The tenants' primary argument as it pertains to the order restricting the landlord's right of entry was that the tenants wanted an individual known as "Sam" to be barred from entering the property on behalf of the landlord. They, quite simply, do not want him there. The parties did not go into further detail as to why this individual ought to be barred from the property. That having been said, it was not until the final, remaining minutes of the hearing that we addressed this aspect of their claim, and thus there may have been more evidence in this regard. The landlord did not rebut or testify regarding his position in respect of this claim, and nothing further was heard from the parties in this respect.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 29 of the Act outlines when and how a landlord may enter a rental unit (or, go onto a rental unit when that rental unit is a house, a lawn, and a driveway, containing no common areas).

Section 70 of the Act states that an arbitrator may suspend or set conditions on a landlord's (and, by extension, a third party acting for the landlord) right to enter a rental unit under section 29.

In this case, the tenants did not provide sufficient evidence establishing why an order under section 70 ought to be issued. Though the landlord did not dispute or rebut the tenants' submissions on this point, there is insufficient evidence before me to make such an order, and specifically, an order barring a specific individual from entering the property at the direction of the landlord.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for an order under this section.

While I dismiss this aspect of the tenants' application, I acknowledge that given the limited time available to hear from both parties on this issue. Therefore, I dismiss the tenants' claim with leave to reapply.

I grant the tenants a monetary award in the amount of \$100.00 for the filing fee.

### Conclusion

I hereby order that the Notice issued on November 30, 2018, is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the Act. I hereby award the tenants a monetary award in the amount of \$100.00 for recovery of the filing fee. The tenants may deduct \$100.00 from the rent for February 2019 in full satisfaction of this award.

I hereby dismiss the remainder of the tenants' application with leave to reapply.

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

Dated: January 14, 2019

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Residential Tenancy Branch