



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC FFT MT FFL OPC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice"), more time to make an application to cancel the landlord's One Month Notice and reimbursement of the filing fee. This hearing also considered the landlord's application pursuant to the *Act* for an order of possession and reimbursement of the filing fee.

The tenant attended the hearing but no one appeared on behalf of the landlord. I kept the teleconference line open until 9:40 A.M., to allow the landlord the opportunity to call in to the hearing scheduled for 9:30 A.M. The teleconference system indicated that only the tenant and I had called into the hearing. I confirmed the correct call in number and participant code for the hearing I had been provided. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant testified she served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on February 3, 2019. Furthermore, the tenant testified that she served the landlord with her evidence by registered mail sent on February 16, 2019. The tenant provided the Canada Post tracking numbers in support of service. These tracking numbers are referenced on the first page of the decision.

Based on the undisputed testimony of the tenant, I find the tenant has properly served the landlord with the Notice of Hearing and Application for Dispute Resolution documents pursuant to sections 89 & 90 of the *Act* and the landlord is deemed served

with both the Notice of Hearing and evidence on February 8, 2019 and February 21, 2019, five days after their respective mailing.

The One Month Notice was dated January 8, 2019 and the notice states that it was posted on the tenant's door on January 9, 2019. However, the landlord did not provide a proof of service or any evidence to establish service of the notice. The tenant testified that she found the notice on her front door on January 22, 2019. As there is no evidence submitted that the notice was posted before January 22, 2019, I find that the One Month Notice was served when it was found by the tenant on January 22, 2019 pursuant to section 71(2)(b) of the Act.

#### Preliminary Matter: Non-Appearence of Landlord

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the landlord did not attend the hearing and in the absence of any evidence or submissions, I order the landlord's application dismissed without leave to reapply.

#### Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's One Month Notice pursuant to section 66?

Is the tenant entitled to cancellation of the landlord's One Month Notice pursuant to section 47?

Is the tenant entitled to reimbursement of her filling fee pursuant to section 72?

#### Background and Evidence

The tenant testified that the parties have a fixed term tenancy agreement commencing on January 1, 2018 and ending on May 31, 2020. The tenant further testified that the monthly rent is \$1,880.00 and she paid a \$940.00 security deposit. The tenant submitted a copy of the tenancy agreement.

The tenant testified that she found the One Month Notice on her front door on January 22, 2019. The One Month Notice stated that the tenancy was being ended because the tenant had too many occupants in the rental unit. The tenant denies this allegation and the tenant wanted to continue the tenancy.

### Analysis

The tenant requested additional time to make her application to cancel the landlord's One Month Notice pursuant to section 66 of the *Act*. According to section 47(4) of the *Act*, the deadline to dispute the One Month Notice is ten days after the tenant received the notice. As stated above, I find that the One Month Notice was served on January 22, 2019. Accordingly, the tenant had ten days after January 22, 2019 to dispute the notice, being February 1, 2019. Since the tenant filed her application for dispute resolution on February 1, 2019, the tenant's application to cancel the One Month Notice was timely filed and an extension of the filing deadline pursuant to section 66 of the *Act* is unnecessary.

Pursuant to *Residential Tenancy Branch Rules of Procedure ("RTB Rules")*, Rule 6.6 states that the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy on a balance of probabilities. This means that *RTB Rule* 6.6 requires the landlord to prove that, more likely than not, that facts occurred as alleged in the One Month Notice. Failure to do this will lead to the notice being cancelled.

Based the absence of evidence submitted from the landlord, and the undisputed testimony of the tenant denying the validity of the notice, I find that the landlord has failed to satisfy their burden of establishing that the grounds for ending the tenancy stated in the One Month Notice are valid. Accordingly, I grant the tenant's request to cancel the landlord's One Month Notice. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenant has prevailed in this matter, I grant the tenant's request for reimbursement of the filing fee. The tenant may deduct \$100.00 from a future rent payment.

Conclusion

The landlord's application is dismissed without leave to reapply.

The the landlord's One Month Notice is cancelled. This tenancy shall continue until it ends pursuant to the *Act*.

I grant the tenant's request for reimbursement of the filing fee. The tenant may deduct \$100.00 from a future rent payment.

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: March 11, 2019

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Residential Tenancy Branch