



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel a One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenant and his advocate ("**SM**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, SM, and I were the only ones who had called into this teleconference.

SM testified that she served that the landlord with the notice of dispute resolution package and supporting evidence via registered mail on August 12, 2021 to the landlord's address for service listed on the Notice. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the landlord was deemed served with this package on August 17, 2021, five days after SM mailed it, in accordance with sections 88, 89, and 90 of the Act.

Effect of the Landlord's Failure to Attend

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, despite this being the tenant's application, the landlord bears the evidentiary burden to prove the facts underpinning the Notices are true.

As the landlord failed to attend the hearing and present its evidence, I find that it has failed to discharge its evidentiary burden.

As such, I grant the tenant's application, and order that the Notice is cancelled and of no force or effect. The tenancy shall continue.

I order the tenant to serve the landlord a copy of this decision as soon as reasonably possible after receiving it from the Residential Tenancy Branch.

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: November 26, 2021

Residential Tenancy Branch