



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC FFT OLC

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- the cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by her youth worker ("**AT**"). The landlord was assisted by her fiancé ("**SA**"), who is also named as a landlord on the tenancy agreement

### **Preliminary Issue – Tenant Vacated Rental Unit**

The tenant has vacated the rental unit. As such, she agreed that her application to cancel the Notice is no longer necessary. She agreed that this portion of her application should be dismissed. I dismiss her application to cancel the Notice without leave to reapply.

### **Preliminary Issue – Service**

The Tenant applied to cancel the Notice on August 3, 2021. She received the notice of the notice of dispute resolution package from the Residential Tenancy Branch (the "**RTB**") on August 18, 2021. She testified that she did not serve this package on the landlord upon receipt, as she was concentrated on vacating the rental unit (between August 3 and 18, 2021 she changed her mind about wanting to remain in the rental unit). On November 4, 2021, as part of a pilot project to increase Branch efficiency, the RTB contacted the tenant to determine whether hearing was still necessary. The tenant indicated that it was.

On November 10, 2021, the tenant amended her application to include the claim for the return of the security deposit. She served the amendment form (form RTB-42T) on the landlord shortly thereafter. However, she did not serve the notice of dispute proceeding

package on the landlord at this time. This package included the date and time of the hearing as well as instructions for submitted evidence and calling into the hearing. SA stated that the tenant advised him that the hearing was on “the ninth”. During this hearing (which took place on December 6, 2021), the tenant also referred to a hearing on “the ninth”. When I asked if she had made another application against the landlord, she clarified that she misspoke at the hearing, and meant to say, “the sixth”. Based on this and SA’s testimony, I find it likely that she similarly misspoke when providing the amendment form to the landlord.

The landlord learned of the date of this hearing, how to submit evidence, and how to call into the hearing after having received an automated email in late November 2021 that the RTB sends to parties to remind them of evidence submission deadlines.

RTB Rule of Procedure 3.1 requires an applicant to serve the respondent with a copy of the notice of dispute proceeding package and supporting evidence within three days of receive this package from the RTB. The tenant failed to do this within the required timeframe, or at all. As such, I find it would be unfair to the landlord to proceed with this hearing. She was deprived of time to prepare for the hearing that the Rules of Procedure allot to her.

Additionally, the landlord made an application against the tenant’s security deposit the same day she received the tenant’s forwarding address. This application is scheduled to be heard in April 2022. The issue of the return of the security deposit will be addressed at that hearing.

In the circumstances, I find it appropriate to dismiss the tenant’s application for the return of her security deposit, with leave to reapply in the event the decision following the April 2022 hearing does not address the issue of who is entitled to the security deposit.

I dismiss the tenant’s application to recover the filing fee without 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 *Residential Tenancy Act*.

Dated: December 6, 2021

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Residential Tenancy Branch