



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant October 06, 2022 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause received by the Tenant October 06, 2022 (the “Notice”).

The Tenant appeared at the hearing. P.S. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

P.S. confirmed the full legal name of the Landlord which is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. P.S. confirmed receipt of the hearing package. P.S. testified that they did not receive evidence from the Tenant. The Tenant testified that they did not serve their evidence on the Landlord. I found the Tenant did not comply with the Rules in relation to service of their evidence. I heard the parties on whether the evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenant sought admission of the evidence whereas P.S. sought exclusion. I excluded the Tenant’s evidence because I found it would be unfair to the Landlord to consider it when it had not been served and P.S. could not address it.

I did not ask the Tenant about receipt of the Landlord’s evidence; however, I do not find this relevant given my decision below.

### Issues to be Decided

1. Should the Notice be cancelled?

### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started September 01, 2019.

Neither party submitted a copy of the Notice. When asked about this, the Landlord submitted that it was the Tenant's responsibility to submit the Notice because the Tenant disputed it. The Landlord also stated that the Tenant disputed the Notice so obviously received it. Further, the Landlord testified that the Notice was served September 23, 2022, not October 06, 2022, when the Tenant said they received it.

### Analysis

A One Month Notice to End Tenancy for Cause is issued pursuant to section 47 of the *Act*. Section 47(3) of the *Act* requires the notice to comply with section 52 of the *Act* which states:

52 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...
- (e) when given by a landlord, be in the approved form.

Rule 6.6 of the Rules 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.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove they issued a valid notice to end tenancy. Part of proving a valid notice to end tenancy was issued is proving the notice complies with section 52 of the *Act*.

Here, I do not have a copy of the Notice before me. I do not know what grounds the Notice was issued on. I do not know whether the Notice complies with section 52 of the *Act*.

I do not agree that the Tenant was required to provide a copy of the Notice. The Landlord has the onus to prove the Notice and therefore has the onus to provide a copy of it to prove the grounds for the Notice and that it complies with section 52 of the *Act*.

The issue is not whether the Tenant received the Notice. The issue is whether I can review the Notice, see the grounds for the Notice and see that it complies with section 52 of the *Act*. Here, I cannot do so because I do not have a copy of the Notice.

The date the Notice was served, received and disputed is not relevant in the circumstances. Even if the Tenant disputed the Notice late, I must consider section 52 of the *Act* because section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy]...

Given the Notice was not submitted, I cannot determine whether it complies with sections 47(3) and 52 of the *Act* and therefore the Notice is cancelled. I find the Landlord has failed to prove the validity of the Notice as required by rule 6.6 of the Rules.

The Application is granted. The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: November 21, 2022

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Residential Tenancy Branch