



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and provided affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, and to respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has a valid 1 Month Notice to End Tenancy (the Notice) been issued and served to the Tenant in accordance with section 47 of the *Residential Tenancy Act* (the Act)?

### Background and Evidence

At the outset of the hearing the Tenant affirmed she did not serve the Landlord with her evidence which included one letter from another tenant in her building. She confirmed she did not submit a copy of the disputed Notice into evidence.

The parties agreed they entered into a month to month tenancy that began on August 15, 2011. Rent is payable on the first of each month in the amount of \$770.00 and the Tenant pays parking fees of \$20.00 per month. On August 27, 2011 the Tenant paid \$395.00 as the security deposit.

The Tenant provided testimony and argued that she was personally served the 1 Month Notice on February 29, 2011 but that it was dated March 1, 2011. Later in her testimony she stated it was issued February 29, 2011.

The Landlord attended the hearing and provided testimony that she is fearful of the Tenant and her boyfriend who appears to be intoxicated at all hours of the day and night. She advised that since the Tenant did not provide a copy of the Notice into evidence she is requesting that I put a stop to this situation by giving my decision to end this tenancy on March 31, 2012.

### Analysis

The Tenant confirmed she did not provide the Landlord with a copy of her evidence which is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Landlord has not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

The Tenant made an Application to cancel a Notice to End Tenancy; however, she did not submit a copy of the Notice into evidence she wanted cancelled. The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenant.

The Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Tenant's claim, in particular when she is asking to have this document cancelled.

The responsibility of proving a claim is on the person making the claim. As the Tenant failed to provide a copy of the Notice, I find the Tenant has provided insufficient evidence to prove her claim. Accordingly I dismiss the Tenant's application.

The Tenant has not been successful with her application; therefore I find she must bear the burden of the cost to file her application.

Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, (a) the landlord makes an oral request for an order of possession, and (b) the director dismisses the tenant's application or upholds the landlord's notice.

In this case the Landlord appeared and requested that I end the tenancy as of March 31, 2012. Therefore I award the Landlord an Order of Possession, pursuant to section 55(1) of the Act.

Conclusion

I HEREBY DISMISS The Tenant's application.

The Landlord's decision will be accompanied by an Order of Possession, effective March 31, 2012 at 1:00 p.m. This Order is legally binding and must be served upon the Tenant.

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 16, 2012.

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Residential Tenancy Branch