



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

This hearing dealt with an Application for Dispute Resolution by the Tenant requesting to cancel a One Month Notice to End Tenancy for Cause.

The Tenant provided affirmed testimony that she had a friend assist her with completing the Application for Dispute Resolution and that together they incorrectly put the address for the Landlord on the Application which the Tenant signed. The Tenant also testified that another friend assisted her with the mailing, and that she sent the Application and Notice to the Landlord, also at the wrong address, by registered mail on March 15, 2012.

The Tenant testified that the registered mail came back as it was for the wrong address. The Tenant testified that she then sent the Application and Notice to the correct address for the Landlord by registered mail on March 22, 2012. The Tenant stated that she had the Landlord's correct address prior to filing her Application. The Tenant confirmed that the Landlord's correct address is the one stated on the One Month Notice to End Tenancy which was posted on the door of the rental unit on February 26, 2012, which she stated she received on that date. The Tenant provided a copy of the One Month Notice to End Tenancy into evidence. The One Month Notice to End Tenancy states that the Tenancy is to end on March 31, 2012.

The Tenant filed her application with our office on March 09, 2012 and was provided with the Notice of Hearing package on March 14, 2012 to serve on the Landlord.

The Landlord provided affirmed testimony at the hearing that they only found out about the hearing on March 26, 2012 less than five days prior to the hearing date, when the registered mail was served. The Landlord stated that the Tenant did not serve them within three days of making the Application as required by the Act, and waited until the tenancy was nearly at an end to serve them. The Landlord stated that they have had inadequate notification of the hearing and have been unable to gather their evidence to fully respond as a result. The Landlord stated that their evidence will support illegal activity at the rental unit and RCMP attendance at the rental unit. The Landlord requested at the hearing that an order of possession be granted.

Section 59(3) of the Residential Tenancy Act, the "Act", requires that the applicant serve the respondent with the Application, which includes the Notice of Hearing, within three days. Section 59 of the Act states:

### **Starting proceedings**

**59** (1) [Repealed 2006-35-83.]

(2) An application for dispute resolution must

- (a) be in the applicable approved form,
- (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
- (c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Section 89 of the Act, provides specific rules for the service of the Application for dispute resolution package. Section 89 of the Act states:

### **Special rules for certain documents**

**89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I find that the Tenant had the correct address for the Landlord but incorrectly stated the Landlord's address on the Application filed with our office and failed to serve the Landlord with the Application, Hearing Notice package and evidence within three days as required by section 59 of the Act. I also find that the Tenant failed to amend the Application with our office to identify the correct address for the Landlord and serve an amended application on the Landlord. I find that the Landlord did not receive the Application, Hearing Notice package, and evidence within five days prior to the hearing and was thus had an inadequate amount of time to respond to the Tenant's Application.

As a result, I find that it is appropriate to dismiss the Tenant's application.

As the Tenant's Application is dismissed and the Landlord requested an order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request.

Section 55(1) of the Act states:

**Order of possession for the landlord**

**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 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.

As I have dismissed the Tenant's Application, I find that the Landlord is entitled to an order of possession effective **March 31, 2012 at 1:00 P.M.**

This order must be served on the Tenant and may be filed in the Supreme Court. The order of possession is attached to the Landlord's copy of the decision.

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 30, 2012.

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Residential Tenancy Branch