



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WEST HOTEL  
and [tenant name suppressed to protect privacy]

## **REVIEW HEARING DECISION**

Dispute Codes      CNC MNDC OLC

### Introduction

This hearing dealt with a review hearing of the tenant's original Application for Dispute Resolution, seeking to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

On November 7, 2013 an Arbitrator issued a decision dismissing the tenant's application as the tenant did not attend the teleconference hearing on November 7, 2013, and issued the landlord an order of possession after the landlord verbally requested an order of possession during that hearing. The tenant did not attend the teleconference hearing on November 7, 2013 and applied for a Review Consideration of the November 7, 2013 decision citing that he was unable to attend the hearing. On November 22, 2013, a different Arbitrator suspended the decision dated November 7, 2013, pending the outcome of this review hearing.

The tenant and a witness for the tenant attended the review hearing on January 10, 2014. As the landlord did not attend the review hearing, service of the Notice of a Dispute Resolution Hearing/Notice of Review Hearing (the "Notice of Review Hearing") was considered. The tenant testified that the Notice of Review Hearing and evidence was personally served on the landlord on November 28, 2013 at the front desk in the lobby of the hotel in which the tenant was residing and the landlord agents were working named "Sharon" and "Ya Ya". The tenant stated that he verbally advised "Sharon" and "Ya Ya" that the Notice of Hearing documents when placed on the front desk in front of "Sharon" and "Ya Ya" were "related to a Review Hearing as the original decision was suspended". Based on the undisputed testimony of the tenant, I am satisfied that the landlord was sufficiently served in accordance with the *Act* on November 28, 2013.

The hearing process was explained to the tenant, and the tenant was provided the opportunity to ask questions during the hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

### Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the 1 Month Notice to End Tenancy for Cause. I find that not all the claims in the tenant's Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 1 Month Notice to End Tenancy for Cause at this proceeding. The balance of the tenant's application is dismissed with leave to reapply, which includes the tenant's application for a monetary order and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

The tenant also requested to amend his address on the application to the rental unit address as he realized the address provided in his original application was not correct. As a result, the address of the tenant on the tenant's application was amended to reflect the rental unit address of the tenant.

### Issue to be Decided

- Should the 1 Month Notice be cancelled?
- Should the original decision dated November 7, 2013 be confirmed, set aside or varied?

### Background and Evidence

The tenant stated that a month to month tenancy began on or about August 31, 2011. The tenant testified that monthly rent in the amount of \$525.00 is due on the first day of each month and that he paid a security deposit at the start of the tenancy.

The tenant has applied to cancel a 1 Month Notice, however, a copy of the 1 Month Notice was not submitted in evidence by the tenant. The tenant was asked to provide specific details from the 1 Month Notice during the hearing. The tenant testified that he did not have a copy of the 1 Month Notice and could not recall specific details from the 1 Month Notice. The tenant stated that his witness would not be providing details

regarding the 1 Month Notice, and as a result, the tenant was advised during the hearing that I did not need to hear testimony from the tenant's witness unless he would be able to provide details regarding the 1 Month Notice.

### Analysis

Based on the testimony provided during the hearing, and on the balance of probabilities, I find the following.

The tenant has applied to cancel a 1 Month Notice, however, failed to submit a copy of the 1 Month Notice in evidence. The hearing package provided to the applicant tenant contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Review Hearing provided to the parties.

The 1 Month Notice to End Tenancy for Cause document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the tenant's application, in particular when he is applying to have an Arbitrator cancel the 1 Month Notice. The tenant was unable to provide any evidence regarding the details of the 1 Month Notice, either verbally or in documentary form. Therefore, I find the tenant has provided insufficient evidence to support his application. Given the above, I **dismiss** the tenant's application to cancel the 1 Month Notice, **without leave to reapply**.

As a result of the above, and pursuant to section 82(3) of the *Act*, I **vary** the decision dated November 7, 2013 as follows. I **dismiss with leave to reapply**, the tenant's application for a monetary order and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement. As described above, the tenant's application to cancel the 1 Month Notice is **dismissed** due to insufficient evidence, **without leave to reapply**.

Furthermore, and pursuant to section 82(3) of the *Act*, I **confirm** the order of possession granted to the landlord dated November 7, 2013. The order of possession dated November 7, 2013 **stands and is of full force and effect**.

### Conclusion

The decision dated November 7, 2013 has been varied by dismissing with leave to reapply the tenant's application for a monetary order and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement. The tenant's application to cancel the 1 Month Notice has been dismissed without leave to reapply.

The order of possession dated November 7, 2013 is confirmed and is of full force and effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 10, 2014

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Residential Tenancy Branch

