



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC FF O

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), to recover the filing fee, and for "other", although no other remedies were requested under "other" in the tenants' application.

The tenants, legal counsel for the tenants, and two witnesses for the tenants attended the hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence was considered. The tenants testified that they served the Notice of Hearing, Application, and documentary evidence package by registered mail on the landlord at the address provided by the landlord on the 1 Month Notice on April 9, 2014. The tenants testified that the registered mail package was not returned. Documents served by registered mail are deemed served five days later pursuant to section 90 of the *Act*. Therefore, I accept that the landlord was deemed served with the Notice of Hearing, Application and documentary evidence as of April 14, 2014.

I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matter

Although legal counsel for the tenants stated that they felt that the respondent landlord was not their landlord, the tenants did state that their written tenancy agreement was with "KW", who has power of attorney for their son, "JK". The tenants did not provide a copy of the power of attorney described above in evidence. The tenants' position is that

their tenancy agreement is with their son, “JK”, and not the respondent landlord, “CM”. I find the tenants have provided insufficient evidence to support that “CM” is not their landlord, as the tenants confirmed that “CM” is a co-owner of the rental unit and the definition of landlord under section 1 of the *Act* includes the owner of the rental unit who permits occupation of the rental unit under a tenancy agreement or exercises powers and performs duties under the *Act*, the tenancy agreement or a service agreement.

### Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

The tenants submitted a copy of the 1 Month Notice dated March 28, 2014. The tenants stated that they were served with the 1 Month Notice by way of a process server on Sunday, March 30, 2014. The tenants disputed the 1 Month Notice on April 9, 2014 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following two reasons on the 1 Month Notice:

1. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord did not attend the hearing to prove that the 1 Month Notice dated March 28, 2014 was valid and should be upheld.

### Analysis

Based on the documentary evidence and the undisputed testimony of the tenants, and on the balance of probabilities, I find the following.

When tenants dispute a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

As the landlord did not attend the hearing to present evidence to support the 1 Month Notice, **I find** the landlord has failed to prove that the 1 Month Notice is valid. As a

result, I **cancel** the 1 Month Notice dated March 28, 2014. I **ORDER** the tenancy to continue until ended in accordance with the *Act*.

As the tenants were successful with their application, I find that the tenants are entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of **\$50.00** to recover their filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of \$50.00. This order must be served on the respondent landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The 1 Month Notice dated March 28, 2014 is cancelled, due to insufficient evidence from the landlord. The tenancy will continue until ended in accordance with the *Act*.

As the tenants' application had merit, the tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$50.00 to recover their filing fee

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: June 3, 2014

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Residential Tenancy Branch

