



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This is an application filed by the tenant to obtain an order to cancel a notice to end tenancy issued for cause and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The tenant states that the landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on July 18, 2014. The landlord did not submit any documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

At the outset of the hearing, the landlord stated that she was not prepared to participate in the hearing as she had written down the wrong date for the hearing. The landlord confirmed in her direct testimony that she did receive the notice of hearing package and the submitted documentary evidence and was planning on filing her documentary evidence 5 days before the hearing that she thought was in the following week. I find that the landlord has failed to provide sufficient cause to adjourn this matter and order that the hearing proceed.

### Issue(s) to be Decided

Is the tenant entitled to an order to cancel the notice to end tenancy?

### Background and Evidence

The tenant states that he received a 1 month notice to end tenancy issued for cause dated July 7, 2014 from the landlord. The notice displays an effective end of tenancy date of August 7, 2014. The shows one reason for cause noted and written, “\*See Back of Page”.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In summary, the landlord wrote that the lawn be mowed as there is an unsightly mess and that the landlord needed access to the storage unit on the rental property. The landlord's letter states that the tenant did not respond to the landlord's request and is in breach of a material term of the signed tenancy agreement. The tenant disputes these claims. The landlord confirmed the contents of the notice and that the tenant was personally served with the notice dated July 7, 2014 on the same date.

The landlord clarified that the tenant was contacted by telephone to allow her access to a storage room on the rental property as per a condition of the signed tenancy agreement. The landlord states that she gave written notice via email to the tenants who acknowledged receipt and told the landlord to attend the next day, but to call in advance. The landlord states that she tried to call and was unable to reach the tenants. The tenant, C.D. disputes this stating he was home all day waiting for a call that he never received. The landlord states that the tenant was then served with the above noted notice to end tenancy dated July 7, 2014.

### Analysis

I find that the landlord is in error when she dated the 1 month notice to end tenancy issued for cause. The notice is dated July 7, 2014 and rent is due on the 1<sup>st</sup> of each month. As per the Residential Tenancy Act the notice is deemed to be effective 1 month after the date when rent is due. In this case, the effective end of tenancy date is corrected to August 31, 2014.

I also find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. The onus or burden of proof lies with the party who is making the claim. In this case it is the landlord with the reasons for cause to end the tenancy. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The landlord has failed to establish the reasons for cause. The notice dated July 7, 2014 is set aside. The tenancy shall continue. The tenant has been successful in their application.

The tenant is also entitled to recovery of the \$50.00 filing fee. As the tenancy continues, I order that the tenant upon receipt of this decision may withhold \$50.00 one-time from the next months rent in satisfaction to recover the filing fee.

Conclusion

The tenant's application is granted. The notice dated July 7, 2014 is set aside and the tenancy continues. The tenant may withhold \$50.00 one-time from the monthly rent in satisfaction to recover the filing fee.

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: September 18, 2014

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Residential Tenancy Branch

