



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47.

Both parties attended and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant gave sworn testimony that he personally served the landlord with the Application for Dispute Resolution hearing package on March 12, 2015. The landlord confirmed receipt of the tenant's dispute resolution package. Based on the evidence provided and pursuant to section 89 of the *Act*, I find the landlord was duly served with the Application for Dispute Resolution hearing package.

### Preliminary Matter: Service of Notice to End Tenancy

The tenant applied to cancel a 1 Month Notice issued by the landlord. The tenant testified, providing some evidence that he received the 1 Month Notice on March 5, 2015. He testified that the landlord had spoken to him on January 17, 2015 advising him that the landlord's family would be moving into his rental unit and that he would be required to vacate. He testified that he was given no written notice at that time. The landlord also testified that, on January 17, 2015, she and her husband spoke to the tenant advising him verbally that he would be required to vacate the rental unit.

The landlord's initial testimony regarding service of the 1 Month Notice to End Tenancy was that she, at the request of the tenant, provided a written 1 Month Notice later in the day on January 17, 2015. During the course of the hearing, the landlord testified that she believed the 1 Month Notice was provided to the tenant on another date in January. Later in her testimony, the landlord testified that it may have been sometime in early February that she provided the 1 Month Notice to the tenant.

The date on which a Notice to End Tenancy is served to the tenant triggers the timeline for the tenant to respond and dispute that notice. In the case of a 1 Month Notice, the tenant is required to apply to dispute the notice within 10 days. If the tenant does not dispute the notice within 10 days, he is presumed to have accepted the notice to end tenancy and is required to vacate the rental unit (section 4(4) and 47(5) of the *Act*).

Furthermore, pursuant to section 88 of the *Act* and Residential Tenancy Policy Guideline No. 12, upon the tenant disputing a notice to end tenancy, the landlord must justify all aspects of that notice, including the service of the notice to the tenant. The guidelines state, "Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply. Adjournments to prove service are given only in unusual circumstances".

Section 47(2) and section 47(3) of the *Act* require that a notice to end tenancy for cause must comply with the proper form and content of a notice to end tenancy as provided in section 52.

### **Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given the conflicting testimony regarding service of the Notice to End Tenancy in this matter, an initial determination regarding this service hinges on a determination of credibility. A useful guide in that regard, and one of the most frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.) In addition to the manner and tone (demeanour) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy.

The tenant's demeanor during the hearing has convinced me of his credibility. He answered all questions asked of him in a calm and candid manner, and never wavered

in his version of events. The tenant's application filed one month ago indicates that he was served the 1 Month Notice on March 5, 2015. The tenant went so far as to provide a photograph of the 1 Month Notice taped to his rental unit door. He provided undisputed testimony with respect to other areas of relevance, including the fact that the landlord has refused to accept rent. The landlord confirmed that she has refused to accept rent. The tenant also made some important admissions, including the fact that the landlord had provided a verbal indication that they wanted him to vacate the unit.

The landlord's evidence, on the other hand, was not credible. During the course of her testimony, the landlord provided at least three different possible dates as the date of service of the 1 Month Notice. The landlord acknowledged that the 1 Month Notice was not provided on the date indicated on the 1 Month Notice itself. Moreover, the landlord acknowledged that the reason sought to end the tenancy was to house family and not the grounds indicated on the 1 Month Notice.

I have considered the credibility of both party's testimony as well as the burden of proof, which falls to the landlord when a notice to end tenancy is disputed. I accept the tenant's testimony with respect to his receipt of the 1 Month Notice. I find the landlord's testimony lacking in credibility and consistency. The landlord has not, on a balance of probabilities proved that the tenant was sufficiently served with the 1 Month Notice. Therefore, the landlord's 1 Month Notice to End Tenancy for Cause is invalid. The tenancy will continue.

### Conclusion

I find that the landlord's 1 Month Notice to End Tenancy for Cause is invalid and therefore of no force and effect. The tenancy will continue.

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: April 17, 2015

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Residential Tenancy Branch