



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”).

The Tenant appeared for the hearing with an agent who represented the Tenant and translated for him. The owner of the company named on the Application appeared with his legal counsel and called a witness during the hearing. All evidence was provided under affirmation. At the start of the hearing, the parties consented to the Tenant’s Application to be amended with the correct legal name of the Landlord. This is now reflected in the style of cause on the front page of this Decision. I also determined that the Tenant had disputed the Notice within the ten day time limit stipulated by Section 47(4) of the *Residential Tenancy Act* (the “Act”).

Legal counsel confirmed that the Landlord had received the Tenant’s Application and his evidence relating to this dispute. Legal counsel explained that they had not provided any documentary evidence for this hearing in advance; however, evidence had been provided by the Landlord for a Landlord’s Application for an Order of Possession which was based on the same Notice being determined in this hearing. The Landlord’s Application had been scheduled to be heard on October 6, 2015 (the file number for which appears on the front page of this Decision).

The Landlord’s legal counsel was informed that as they had not submitted evidence for the Tenant’s Application to be heard in this hearing, that evidence being relied upon for the Landlord’s hearing to be held on October 6, 2015 could not be used in this hearing. The Landlord was cautioned that if they were not able to bear the burden of proof for the Notice in this hearing, it could not be re-argued again in the October 6, 2015 hearing as the principle of *res judicata* would apply. As a result, I offered both parties an opportunity to delay this matter to be heard together in the October 6, 2015 hearing.

The Tenant agreed to this course of action. However, while the Landlord took some time to discuss this issue with his legal counsel, they decided to proceed based on his oral testimony and the oral testimony of a witness called to give evidence during the proceedings.

The hearing continued to hear the oral testimony of both parties. The Tenant's agent disputed all of the Landlord's oral evidence. However, the Tenant indicated that he was not happy in this tenancy and was planning to move out of the rental unit at some point in the future. As a result, I offered the parties an opportunity to engage in a discussion about mutually agreeing to end the tenancy. The parties engaged into a conversation, turned their minds to compromise and agreed to end the tenancy on mutual terms.

### Analysis & Conclusion

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an order.

The parties agreed to end the tenancy at **1:00 p.m. on September 15, 2015** at which point the Tenant will fully vacate the rental property. The Landlord is issued with an Order of Possession effective for this date. This order may be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit in accordance with the above agreement.

The Tenant is still obligated to pay rent for the duration of the tenancy on the first day of each month. This agreement does not stop the Landlord from ending the tenancy earlier using remedies for other breaches of the Act, such as nonpayment of rent. This agreement is fully binding on the parties.

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: July 31, 2015

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Residential Tenancy Branch

