



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Preliminary Issues

Upon review of the Tenant's application both parties confirmed that the Landlord was a corporate realty company which operates a rental division with the same name as listed on the Tenant's application for Dispute Resolution. The Landlord clarified that the corporate name was the Landlord's name as listed on the 1 Month Notice.

Based on the submissions by both parties the style of cause for this Decision was amended to include the Landlord's corporate name, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on June 11, 2015 seeking to cancel a 1 Month Notice to end tenancy issued for cause.

The hearing was conducted via teleconference and was attended by two agents for the Landlord, the applicant Tenant, and the applicant's Agent. As indicated above the respondent was a Corporate Landlord. The evidence indicated that the applicant Tenant was one of two co-tenants who entered into a written tenancy agreement. The Agent provided oral evidence on behalf of the applicant Tenant. Therefore, for the remainder of this decision, terms or references to the Landlord and the Tenant importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. The Landlord confirmed receipt of the Tenant's application, hearing documents and evidence.

The Tenant testified that she did not receive copies of the Landlord's evidence and she did not receive copies of a registered mail notification. The Landlords testified that their evidence was served upon the Tenant via registered mail which was sent on July 28, 2015. Canada Post tracking numbers were submitted in the Landlord's testimony.

Canada Post tracking information confirmed that Canada Post forwarded the registered mail to the Tenant's new address, attempted delivery of the package on July 31, 2015 and that a notice card was left that date to advise the Tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on August 6, 2015 that the registered mail was available for pick up.

As of August 11, 2015 the Canada Post tracking information confirms that the Tenant still did not pick up the registered mail and the package was being returned to the Landlord.

Section 90 of the *Act* provides that a document given or served in accordance with section 89 of the *Act*, if given or served by mail, is deemed to be received on the 5th day after it is mailed.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the above, I find that the Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of the Tenant to avoid service. Therefore, I find the Tenant was sufficiently served with the Landlord's evidence, pursuant to section 89 of the *Act* and the parties were advised that I would be considering all documentary evidence that was before me.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

#### Issue(s) to be Decided

Have the parties agreed to settle these matters?

#### Background and Evidence

The undisputed evidence was the Tenants entered into a written fixed term tenancy agreement that began on November 11, 2014 and was set to end on November 30,

2015. Rent of \$2,600.00 was due on or before the first of each month and on November 9, 2014 the Tenants paid \$1,300.00 as the security deposit.

During the course of this proceeding the parties agreed to settle these matters.

### Analysis

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.

During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute on the following terms:

- 1) The Tenant agreed to withdraw their application for Dispute Resolution;
- 2) The parties mutually agreed to end the tenancy effective August 31, 2015 at 1:00 p.m. thereby extending the effective date of the Notice by one month; and
- 3) Each person agreed that the terms of this settlement agreement were reached by their own free will and without undue pressure or intimidation.

### Conclusion

The parties agreed to settle these matters and agreed that the Tenant would return vacant possession of the rental unit the Landlord on or before August 31, 2015 at 1:00 p.m., pursuant to section 63 of the *Act*.

In support of the settlement agreement, The Landlord has been issued an Order of Possession effective **August 31, 2015 after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

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: August 11, 2015

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Residential Tenancy Branch

