



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT CNC OLC ERP RP RR O

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "*Act*"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for emergency repairs for health or safety reasons, to make general repairs to the unit, site or property, and "other", although details of "other" were not provided in the tenant's application details.

The tenant attended the teleconference 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 were considered. The tenant testified that she served the landlord with the Notice of Hearing, Application, and documentary evidence by registered mail on September 1, 2015, which was addressed to the landlord's mailing address confirmed in an email submitted in evidence, and as listed on the tenant's shelter information form as the mailing address for the landlord. The tenant testified that in the area they live, the mail service does not get delivered to residential addresses and that mail is only delivered to post office boxes.

The tenant submitted a copy of the registered mail receipt in evidence and according to the online registered mail tracking website, the landlord refused the registered mail package on September 10, 2015. Therefore, based on the undisputed testimony of the tenant, and the online registered mail tracking information that supports that the landlord refused to accept the registered mail package, I find the landlord was served as of September 10, 2015, the date the landlord refused to accept the registered mail package. I also note that refusal or neglect to accept a registered mail package does not constitute grounds for a Review Consideration. Only the evidence relevant to the matters before me have been described below.

### Preliminary and Procedural Matters

Although the tenant had originally applied for more time to make an application to cancel a Notice to End Tenancy and then crossed out that portion of her Application, I accept the testimony of the tenant that when she crossed out that portion of her Application, she did so in error. Therefore, I permit the tenant to amend her application pursuant to section 64(3) of the

Act by including her original request to apply for more time to make an application to cancel a Notice to End Tenancy.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the tenant's application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request for more time to apply to cancel a notice to end tenancy, and to cancel the 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated August 19, 2015 at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

#### Issues to be Decided

- Has the tenant provided sufficient evidence to support an extension of time to apply to cancel a notice to end tenancy?
- Should the 1 Month Notice dated August 19, 2015 be cancelled?

#### Background and Evidence

The tenant testified that a month to month tenancy began on February 1, 2015 and that monthly rent is \$500 per month and is due on the first day of each month.

A copy of the 1 Month Notice was submitted in evidence. The 1 Month Notice is dated August 19, 2015 and lists three causes. The tenant testified that she received the 1 Month Notice on August 20, 2015 and according to her application, she disputed the 1 Month Notice on August 28, 2015 and then amended her application on September 1, 2015. The landlord did not attend the hearing to present the merits of the three causes listed on the 1 Month Notice dated August 19, 2015.

#### Analysis

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

The tenant confirmed that she was served with the 1 Month Notice on August 20, 2015 and according to her application dated August 28, 2015, she disputed the 1 Month Notice on August 28, 2015 and then amended her application on September 1, 2015. Based on the above, I find the tenant originally applied within the 10 day timeline, and then amended her application after that date and accordingly, I find the tenant's application for more time to cancel a Notice to End

Tenancy to be moot and is dismissed as a result. The tenant did apply within 10 day as required by section 47 of the *Act*.

When a tenant disputes a 1 Month Notice within the timeline provided for under section 47 of the *Act*, 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, it will be cancelled. As the landlord did not attend the hearing to present evidence to support the three causes listed on 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 August 19, 2015.

**I ORDER** that the tenancy continue until ended in accordance with the *Act*.

### Conclusion

The tenant's application is successful.

The 1 Month Notice to End Tenancy for Cause dated July 16, 2015 is cancelled, due to insufficient evidence. The tenancy has been ordered to continue until ended in accordance with the *Act*.

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: September 29, 2015

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Residential Tenancy Branch

