



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, O

### Introduction

This hearing was scheduled to hear a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. The landlord did not appear at the hearing. The tenant testified that the landlord was out of town when he needed to serve the hearing package upon the landlord so on August 7, 2015 he handed the hearing documents to an adult woman who was house-sitting for the landlord while he was out of town. The tenant testified that when the landlord returned to town he called the tenant about the hearing package and stated that the tenant had not served him properly. The tenant also submitted that he believed the dispute to have been resolved since he has cleaned up the property, rented garage space from the landlord, and been in regular contact with the landlord.

Section 89(1) provides for ways the hearing package was to be served upon the landlord. It provides:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Based upon the limited information concerning the woman at the landlord's residence I am uncertain as to whether that woman was acting as the landlord's agent.

Accordingly, I am unsatisfied that serving the hearing package upon her met the criteria of section 89(1)(b).

Section 71 of the Act also provides me the authority to deem a person sufficiently served with documents even if the requirements of section 88 or 89 were not met and I have considered whether it is appropriate to deem the landlord sufficiently served.

The Act provides that an applicant must serve the respondent with their hearing package within three days after it is available from the Residential Tenancy Branch. In this case, the hearing package was available August 6, 2015 and the tenant had a deadline of August 9, 2015 to serve the landlord. I accept the undisputed evidence before me that the landlord was out of town during the time he was required to serve the landlord and the tenant gave it to an adult who was at the landlord's residence. Also considering the undisputed evidence that the landlord called the tenant about the hearing package I find I am satisfied the landlord received the tenant's hearing package even if it was not in a manner that complied with section 89(1). Therefore, I deem the landlord to be sufficiently served pursuant to section 71 of the Act and I continued to hear from the tenant without the landlord present.

#### Issue(s) to be Decided

Should the 1 Month Notice be upheld or cancelled?

#### Background and Evidence

The tenant rents a room and has shared access to common areas of a residential property with other tenants that rent other rooms in the house. The landlord does not reside at the house. The tenant was served with a 1 Month Notice to End Tenancy for Cause dated July 21, 2015. The 1 Month Notice has a stated effective date of August 31, 2015. The tenant filed to dispute the Notice within the time limit for doing so.

The tenant testified that he understood the reason(s) the landlord issued the 1 Month Notice pertain to the appearance and his use of the yard and adjacent laneway. The tenant was of the understanding that the issue has been resolved as he has cleaned up the yard, rented garage space from the landlord, spoken with a by-law officer about the appearance of the yard, continued to pay rent to the landlord and has maintained regular contact with the landlord.

#### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Since the tenant disputed the Notice to End Tenancy served upon him and the landlord did not appear at the hearing to present a basis for ending the tenancy, I find the landlord has not met his burden. Accordingly, I find it reasonably likely that this matter has been resolved and I grant the tenant's request to cancel the 1 Month Notice issued on July 21, 2015 with the effect that this tenancy continues at this time.

### Conclusion

The 1 Month Notice to End Tenancy for Cause issued on July 21, 2015 is cancelled with the effect that this tenancy continues at this time.

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: October 14, 2015

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Residential Tenancy Branch

