



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RP, RR, FF, O

### 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 also applied for: repairs to the rental unit; a reduction in rent for repairs agreed upon but not provided; to recover the filing fee; and for “Other” issues.

Both parties appeared for the hearing. However, only the female Landlord and the Tenant provided affirmed testimony. No issues were raised in relation to the service of the Tenant’s Application and the parties’ documentary evidence served prior to this hearing.

### Preliminary Issues

Section 2.3 of the Rules of Procedures state that, in the course of the dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single Application.

As a result, I determined at the start of the hearing that the Notice related to an allegation that the Tenant had sublet the rental unit without the Landlord’s written consent. The Tenant’s Application related to a delay in completing repairs to the rental unit. Therefore, pursuant to Section 2.3 of the Rules of Procedure, I only dealt with the Tenant’s Application to cancel the Notice as these matters were unrelated. The remainder of the Tenant’s Application was not heard in this hearing.

At the start of the hearing, I asked the parties about the service of the Notice. The Landlord testified that she sent the Tenant the Notice dated August 25, 2015 on the same date to the Tenant’s rental unit by registered mail. The Landlord provided the Canada Post tracking number into oral evidence (which is detailed on the front page of this decision) as evidence to verify this method of service. The Tenant could not confirm

when he had received the Notice but testified that he had received it a week later after it was sent by the Landlord and that it was sent on August 26, 2015 contrary to what the Landlord had testified to.

The Tenant asked to verify this on the Canada Post website. As a result, I determined that the Canada Post website showed that the Notice was sent by registered mail on August 25, 2015 and not August 26, 2015. In addition, the Canada Post website also shows that an attempt was made to deliver the Notice to the Tenant on August 26, 2015 and a final notice on August 31, 2015.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. Therefore, under the deeming provisions of the Act, the Tenant would have been deemed to have received the Notice on August 30, 2015 and would have had until September 9, 2015 to make his Application to dispute the Notice pursuant to Section 47(4) of the Act. However, the Tenant did not make his Application to dispute the Notice until September 10, 2015.

Section 47(5) of the Act provides that if a tenant fails to make an Application to dispute a Notice within the 10 day time limit, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the vacancy date on the Notice.

The Tenant was asked why he had made his Application outside of the 10 day time limit provided by the Act. The Tenant stated that he attended the Residential Tenancy Branch on September 10, 2015 and they had advised that he was still within the time limit to make the Application.

The Landlord argued that the Tenant was informed on August 24, 2015 that he was going to be sent the Notice to his address by registered mail. The Landlord testified that she informed the Tenant that he should read the Notice and know of his rights under the Act to dispute the Notice. The Landlord testified that instead the Tenant pursued multiple conversations with the management staff of the property to ask them to withdraw the Notice. However, despite these conversations the Landlord was still seeking an Order of Possession to end the tenancy.

The Tenant provided some opening arguments about his Application and the fact that he understood that he should have got the Landlord's permission in writing to sublet the rental unit and had the Landlord denied this or failed to respond to his written request he should have pursued the matter through dispute resolution before unilaterally deciding

the go forward with the sublet. In this respect, the Tenant asked the Landlord for compassion to allow the tenancy to continue. However, the Landlord stated that she could not allow the tenancy to continue but would be agreeable to ending the tenancy through mutual agreement.

### Settlement Agreement

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. Both parties agreed to settlement of all of the issues in this tenancy under the following terms:

1. The parties agreed that the Landlord will withdraw the Notice as this tenancy will now end on December 15, 2015 at 1:00 p.m.
2. However, this date is contingent on the Tenant making full rent payment as follows: November 2015 rent must be paid on November 15, 2015; and payment of two weeks rent for the period of December 1, 2015 to December 15, 2015 must be made on December 1, 2015.
3. If the Tenant makes these payments the tenancy will end on December 15, 2015. However, if the Tenant does not make any of these payments the Landlord will be able to end the tenancy using the attached Order of Possession which is effective two days after service on the Tenant.
4. The parties understood that if the Tenant makes the rental payments detailed above, the attached Order of Possession can only be used to enforce the ending of the tenancy on December 15, 2015 at 1:00 p.m. if the Tenant fails to vacate the rental unit on this date and time. If the Tenant does not make either of the rent payments, the Landlord may use the attached Order of Possession to enforce the ending of the tenancy two days after service of the order on the Tenant.

The parties confirmed their understanding and agreement of resolution in this manner both during and at the conclusion of the hearing. They also confirmed that they entered into this agreement voluntarily. Copies of the Order of Possession are attached to the Landlord's copy of this Decision.

### Conclusion

As the parties agreed to mutually end the tenancy on December 15, 2015 and the Notice is withdrawn, the Tenant's Application to cancel the Notice and recover the filing fee is dismissed. The Landlord is issued with an Order of Possession.

Accordingly, I also dismiss the Tenant's Application for the Landlord to make repairs to the rental unit as the tenancy is now ending and this issue is now moot. The remainder of the Tenant's Application is dismissed with leave to re-apply.

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: November 12, 2015

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Residential Tenancy Branch

