



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT INC.,  
ELWELL HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

While the landlords' agent attended the hearing by way of conference call, the tenant did not, although I waited until 0940 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930

The agent testified that on 21 May 2016, the landlords served the 1 Month Notice to the tenant by posting that notice to the tenant's door. I find that the tenant was deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the Act.

### Preliminary Issue – Related Application & Mootness

In a related application (file number referenced on covering page to this decision) the landlords sought an order of possession and monetary order by way of direct request. That application related to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice). The adjudicator in the related application upheld the 10 Day Notice and issued the landlords an order of possession effective two days from service on the tenant. The landlords have not yet served the order of possession on the tenant, but intend to as soon as possible. The adjudicator found that the tenant was "conclusively presumed under section 46(5) of the *Act* to have accepted that the "tenancy ended on the corrected effective date of the 10 Day Notice, June 16, 2016."

*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 is the leading case on the doctrine of mootness:

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. ...

While the Residential Tenancy Branch is not a court, it is bound by many of the same decision-making principles as the courts. In particular, I find that I am bound by the doctrine of mootness. In this case, there is no live controversy between the parties as there is no decision that I could make on the application that would result in anything more than a hypothetical exercise in whether the tenant would have been entitled to the remedy of cancelling the 1 Month Notice had the tenancy not already ended. On this basis, I decline to consider the tenant's application to cancel the 1 Month Notice.

As the tenant was not successful on the merits of his application, he is not entitled to recover his filing fee for this application from the landlords.

### Conclusion

I decline to consider the tenant's application as the issues raised are moot.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: June 29, 2016

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Residential Tenancy Branch