



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVONSHIRE PROPERTIES INC. (BEACH TOWERS)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing.

At the outset of the hearing I heard that the tenant vacated the rental unit on July 1 or 2, 2016. The tenant's legal counsel stated the tenant chose to vacate due on ongoing grievances at the property. Since the tenant has already vacated the rental unit the tenant requested that I make a decision pertaining to return of the security deposit and pet damage deposit. The tenant also requested that I make an order for recovery of the filing fee from the landlord. The landlord had submitted that the hearing package was not received until July 15, 2016, despite being filed on June 28, 2016, and the landlord was confused as to the purpose of today's hearing since the tenant had already vacated. Nevertheless, the landlord acted with due diligence by requesting an alternative service address for the tenant since the service address appearing on the Application was the rental unit. The tenant emailed the address of her legal counsel on July 18, 2016 and the landlord responded by sending evidence in support of the 1 Month Notice to the landlord's office, via courier, and to the rental unit address via registered mail on July 21, 2016.

I declined to hear submissions or make a decision concerning the deposits as the landlord was not put on notice that this hearing was to deal with return of the deposits by way of Application for Dispute Resolution and it would be contrary to the principles of natural justice to do so. The tenant was informed that she remains at liberty to file another Application to seek return of the deposits.

Section 59 of the Act requires that an applicant serve the respondent with their Application within three days of filing. The tenant confirmed that she sent the hearing package to the landlord via courier, on July 15, 2016. Since the tenant's Application was filed on June 28, 2016 but she did not send the hearing package to the landlord

until July 15, 2016 I asked the tenant to provide the reason(s) for late service. The tenant claimed the Residential Tenancy Branch did not call her and could not find the hearing package until July 11, 2016. I noted that these reasons differed from Residential Tenancy Branch records, which I read to the tenant during the hearing upon request of her legal counsel. The tenant claimed the Branch's records were inaccurate. The tenant did not provide any explanation as to the reason the hearing documents were not sent within three days of July 11, 2016. In any event, I considered the matter under dispute to be moot since the tenant vacated the rental unit shortly after filing and I was unprepared to proceed with the hearing because the matter was moot and because the tenant failed to serve the landlord within three days of filing as required. As the tenant was informed, if the tenant's inability to serve the landlord within three days of filing was due to an error on part of the Residential Tenancy Branch the tenant's remedy would be take the matter up with the Branch.

In light of the above, the tenant's application was dismissed in its entirety.

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 09, 2016

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Residential Tenancy Branch