



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, RPP

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a One Month Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for an Order for the landlord to return the tenants' personal property.

The female tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch; although not all the tenants' evidence was sent to the landlord. The landlord's evidence was sent to the tenants by registered mail.

*Procedural Matter-* At the outset of the hearing, the matter of each party's evidence was discussed. The tenant agreed that they had only sent part of their evidence to the landlord and the second evidence package received by the RTB consisting of three photographs and a letter from the tenants' neighbor was not sent to the landlord.

In considering Rule 3.14, the tenants as the applicant, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 14 days prior to the hearing, and in this case, the tenants did not. In considering whether to accept the tenants' evidence, I find that the tenants delayed in sending their evidence and I have excluded this portion of the tenants' evidence.

With regard to the landlord's evidence; this was sent by registered mail to the tenants on July 25, 2016 and deemed served five days later on July 30, 2016. The tenant testified that they did not receive the landlord's evidence. In accordance with the Rules of Procedure 3.15 the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing. As this was sent by registered mail and deemed served on July 30, 2016 I must also find the landlord's evidence was not received by the tenants seven days prior to the hearing and cannot therefore be considered.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenants’ application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenants’ application to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining sections of the tenants’ claim at this hearing.

### Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the One Month Notice to End Tenancy for cause?

### Background and Evidence

The parties agreed that this tenancy started on September 01, 2009 for a fixed term of one year, thereafter reverting to a month to month tenancy. Rent for this unit is currently \$600.00 per month due on the first of each month.

The landlord at first testified that he had served the tenants with a One Month Notice to End Tenancy for cause on June 28, 2016. The landlord later could not recall serving the tenants with a One Month Notice to End Tenancy and could not recall the reasons put on that Notice. I asked the landlord repeatedly about the reasons on the Notice as a copy of the Notice was provided in documentary evidence. I asked the landlord to locate his copy of the One Month Notice in his evidence package to go through the reasons provided on that Notice; however, the landlord appeared to be confused and was adamant that he had not served the tenants with a One Month Notice. I asked the landlord if he could clearly understand my request for him to give evidence concerning the One Month Notice. The landlord stated he could understand me but had not served a Notice to End Tenancy to the tenants.

I asked the landlord if there was any one there to assist him with the hearing and he stated no, he was alone.

The tenant attending disputed the reasons provided on the Notice.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reasons indicated on the Notice. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

When considering a One Month Notice to End Tenancy for Cause the landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

After consideration of the above, I find clearly that a One Month Notice to End Tenancy for cause was served upon the tenants. Dispute numerous opportunities for the landlord to provide evidence concerning the reasons given on the One Month Notice the landlord kept insisting he had not served the tenants with a One Month Notice. The landlord was given ample opportunity to locate the Notice to go through the reasons indicated on that Notice and to find someone to assist him at the hearing; however, the landlord continued to state he had not served the Notice.

Consequently, as the landlord was unable to provide evidence to justify the reasons given on the One Month Notice, I must find in favor of the tenants' application and the One Month Notice issued on June 28, 2016 is hereby cancelled and is of no force or effect.

### Conclusion

The tenants' application is allowed; the One Month Notice to End Tenancy for cause dated June 28, 2016 is cancelled and the tenancy will continue until legally ended under the *Act*.

The remainder the tenants' application, not heard today is dismissed with leave to reapply.

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 05, 2016

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Residential Tenancy Branch

