



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MNDC, OLC (Tenant's Application)  
                                 OPC, O, FF (Landlord's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Tenant and the Landlord. The Tenant and an agent for the Landlord appeared for the hearing.

The Tenant applied for the following reasons: to cancel a notice to end tenancy for cause; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and, for the Landlord to comply with the Act, regulation or tenancy agreement. The Landlord applied for an Order of Possession and to recover the filing fee. The Landlord also applied for "Other" issues which related to a request to end the tenancy.

### Preliminary Issues and Findings

The hearing process was explained to the parties and they had no questions about the proceedings. The parties provided affirmed testimony during the hearing. The Landlord's agent testified that the Tenant had been served with a copy of the Landlord's Application by registered mail and provided the Canada Post tracking receipt into evidence to verify this method of service.

The Tenant stated that he had been notified by Canada Post of a package awaiting for him to pick it up but that he had not had time to do so. Based on the foregoing, I find that a party may not avoid service of documents by refusing, delaying, or neglecting to pick up mail. Therefore, I find the Landlord met the service requirements of Section 89(1) (c) of the Act.

The Tenant stated that he had personally served a copy of his Application to the reception person at the Landlord's company's business address. The Landlord's agent vehemently denied receipt or service of the Tenant's Application and explained that she

was not even aware that the Tenant had indeed made an Application. The Tenant was unable to provide any supporting evidence of the manner in which he testified to that he had served the documents to the Landlord for this hearing. Therefore, I was not satisfied that the Tenant had served an agent of the Landlord notice of his claim and therefore, the Tenant's Application could not be considered in this hearing.

However, the Tenant informed that he was vacating the rental unit at the end of this month pursuant to the fixed term end date on the tenancy agreement. The Landlord had applied to end the tenancy earlier than the fixed term tenancy date through the notice to end tenancy for cause which had a vacancy date of August 31, 2016.

However, due to this hearing being scheduled on September 28, 2016 the tenancy would have ended in any case through the ending of the fixed term tenancy agreement. The Landlord still requested an Order of Possession to enforce the ending of the tenancy. The Tenant did not object to the Landlord being issued with an Order of Possession which is effective two days after this hearing, namely on September 30, 2016.

I find that as the Tenant made an Application to dispute the notice to end tenancy for cause dated July 29, 2016, but failed to serve the Landlord with notice of his Application, this caused the Landlord to file the Application to request the Order of Possession. As this has been subsequently granted to the Landlord, I allow the Landlord to recover the filing fee of \$100.00 from the Tenant's security deposit of \$775.00 pursuant to Section 72(2) (b) of the Act.

Accordingly, I dismiss the Tenant's Application to cancel the notice to end tenancy, and for the Landlord to comply with the Act, as this is now a moot issue. The Tenant's monetary claim is dismissed with leave to re-apply as the Tenant failed to put the Landlord on notice of this claim. The Landlord's Application is granted. 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: September 28, 2016

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Residential Tenancy Branch

