



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, AAT, FF

### 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 “1 Month Notice”) issued to the Tenant on August 1, 2016. The Tenant also applied for the Landlord to allow access to the unit and to recover the filing fee.

An agent for the Tenant, the Tenant, and the Landlord appeared for the hearing and provided affirmed testimony. The Tenant’s agent confirmed that she was representing the Tenant in this dispute but was not a tenant in this tenancy.

At the start of the hearing, I determined that the Tenant had applied to dispute the Notice within the ten day limit stipulated by Section 47(4) of the *Residential Tenancy Act* (the “Act”). The hearing process was explained to the parties.

The parties provided oral testimony in relation to the service of the Tenant’s Application and the Notice of Hearing documents. These documents were provided to the Tenant on August 12, 2016 for service on the Landlord within three days pursuant to Section 59(3) of the Act.

The Tenant’s agent explained that the Tenant had sent the documents to the Landlord by registered mail shortly after he had received them. However, the Landlord denied receipt of any documents by registered mail in August 2016 stating that he had only been notified of this hearing when the Tenant provided him with a copy of the Application and the Notice of Hearing one day prior to this hearing when he went to collect rent. The Landlord stated that this did not give him chance to respond and provide evidence to support the 1 Month Notice. However, the Landlord did acknowledged receipt of the Tenant’s documentary evidence which was sent by

registered mail to him sometime in September 2016 but stated that he did not know what this material related to and that it pertained to this dispute resolution hearing.

The Tenant was unable to provide the Canada Post tracking number or receipt to verify that the Tenant has served the Landlord with notice of this hearing and the Application within three days of receiving the documents.

The parties then proceeded to state that the Tenant was looking for a place to move to but was having difficulty in the current rental market. The Landlord stated that he had already given sufficient opportunity for the Tenant to vacate the rental unit, which was included in the Tenant's evidence, but he was willing to work with the Tenant on mutually agreeing to end the tenancy that would give the Tenant sufficient time to find another place to move to.

Before I made any legal findings on the service of the Application, I offered the parties an opportunity to settle this matter by way of mutual agreement. The Tenant's agent suggested that they be allowed to remain in the rental unit until the end of April 2017. The Landlord proposed that the tenancy should end one month earlier than the date suggested by the Tenant's agent. As a result, the parties engaged into discussion, turned their minds to compromise, and achieved a resolution of the dispute by agreeing to mutually end the tenancy.

### 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 end the tenancy under the following terms:

1. The parties agreed to withdraw the 1 Month Notice and instead end the tenancy on March 31, 2017 at 1:00 p.m. which gives the Tenant sufficient time to vacate the rental suite and find new accommodation.
2. The Tenant is allowed to vacate the rental suite at an earlier time if he is able to find suitable accommodation in the interim time period. If this occurs, the parties agreed that the Tenant must provide the Landlord with one full rental month of notice pursuant to Section 45(1) of the Act. However, the parties may also choose to mutually end the tenancy to allow the Tenant to leave at the earliest opportunity, but this will require the consent of both parties in writing.
3. The Tenant is still responsible to pay rent pursuant to Section 26(1) of the Act for the duration of the tenancy until it is ended in accordance with the Act.

4. The parties agreed that in relation to access to the rental unit and repairs to the rental unit, the Tenant will request these in writing from the Landlord and the Landlord must respond accordingly to them pursuant to the Act. The Tenant is at liberty to pursue remedies under the Act if the Landlord fails to complete repairs to the rental unit.
5. For the remaining duration of the tenancy, the parties still retain all methods of relief under the Act to end the tenancy earlier, such as non-payment of rent or for cause.

In order to give effect to the agreed conditions, the Landlord is issued with an Order of Possession which is dated effective March 31, 2017 at 1:00 p.m. This order may be enforced only if the Tenant fails to vacate the rental suite by this agreed date. Copies of this order are attached to the Landlord's copy of this Decision.

As the parties agreed to mutual end the tenancy, I dismissed the Tenant's Application to cancel the 1 Month Notice and recover the filing fee. This agreement is legally binding. The parties confirmed their voluntary agreement and understanding to the above terms during and at the end of the hearing. This file is now closed.

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: October 05, 2016

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Residential Tenancy Branch

