



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OPT, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an Order of Possession of the rental unit, pursuant to section 54; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The "first hearing" on September 26, 2016 lasted approximately 38 minutes and the "second hearing" on November 4, 2016 lasted approximately 10 minutes.

The landlord's agent, PC attended both hearings but he did not provide submissions at the second hearing. The landlord's agent, BC attended the second hearing only and provided submissions. The tenant's lawyer, SEK attended the first hearing only. No one attended the second hearing on behalf of the tenant.

All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Landlord BC confirmed that she had authority to speak on behalf the landlord named in this application at the second hearing. The landlord named in this application provided a written authorization letter, dated September 28, 2016, that both agents PC and BC had authority to speak on his behalf at the second hearing (collectively "landlord").

Pursuant to section 64(3)(c) of the Act, I amended the tenant's application to add a monetary claim for \$18,880.00, as the tenant filed an amendment form, dated

September 19, 2016, to include the above claim after he filed his original application on August 5, 2016.

#### Preliminary Issue - Adjournment of First Hearing and Service of Documents

The first hearing on September 26, 2016 was adjourned because the tenant was out of town and was unable to attend the hearing. At the first hearing, I provided specific instructions to both parties to serve and re-serve evidence in accordance with specific deadlines. I issued an interim decision, dated September 28, 2016, adjourning the first hearing and outlining these specific instructions.

At the first hearing, the landlord confirmed receipt of the tenant's application for dispute resolution and notice of hearing. At the second hearing, the landlord confirmed receipt of the tenant's written evidence package by way of email, as agreed to by both parties and as directed in my interim decision. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's entire application and written evidence package.

At the second hearing, the landlord confirmed that the landlord's responsive written evidence was served to the tenant by way of email on October 1, 2016, as agreed to by both parties and as directed in my interim decision. I received the landlord's written evidence on October 6, 2016 at the Residential Tenancy Branch ("RTB"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's responsive written evidence package and that it was served by the deadline in my interim decision of October 14, 2016.

Accordingly, I proceeded with the second hearing in the absence of the tenant.

#### Preliminary Issue – Dismissal of Tenant's Application

The first hearing only dealt with service issues with respect to both parties' written evidence, not the merits of the tenant's application. That hearing was then adjourned to the second hearing. Both parties agreed that they were available for the second hearing on November 4, 2016, when it was discussed during the first hearing.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance by the tenant or his lawyer, I order the tenant's entire application dismissed without leave to reapply.

The landlord confirmed that the tenant had vacated the rental unit and he had taken back possession and moved into the unit. The landlord confirmed that he did not require an order of possession against the tenant.

### Conclusion

The tenant's entire application is dismissed without 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: November 04, 2016

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Residential Tenancy Branch