



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, CNR, 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;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, EP ("landlord") and the tenant and his lawyer, SEK (collectively "tenant") attended this "current hearing" and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to represent the landlord named in this application, as an agent at this current hearing. The tenant confirmed that his lawyer had authority to represent him at this current hearing. This current hearing lasted approximately 37 minutes.

The tenant's lawyer said that she had not picked up the application package from the Residential Tenancy Branch ("RTB") for this current hearing. She said that she sent a courier to retrieve the package four times from the RTB, without success. She said that she did not have the package in front of her because she was here to deal with a previous RTB application made by the tenant regarding this tenancy. The file number for that previous application appears on the front page of this decision. However, somehow both the tenant and his lawyer were able to call into this current hearing with the correct call-in codes, despite not having the hearing notice or application in front of them.

The landlord said that she received a copy of the tenant's application for this current hearing. When questioned as to how she received it when the tenant's lawyer said that it was never picked from the RTB in order to serve to the landlord, she said that she had received it by mail. I note that the RTB does not mail or serve applications to parties.

#### Preliminary Issue – Previous RTB Hearings

Two previous RTB hearings were held before me, between these parties regarding this tenancy. The "previous first hearing" on September 26, 2016 lasted approximately 38 minutes and the "previous second hearing" on November 4, 2016 lasted approximately 10 minutes. The tenant had filed an application to cancel a 1 Month Notice, to obtain a monetary order for compensation of \$18,880.00 plus the \$100.00 filing fee and to obtain an order of possession for the rental unit.

Another person who was the landlord's agent and the tenant's lawyer who attended this current hearing, attended the previous first hearing on September 26, 2016 and it was adjourned because the tenant was out of town and was unable to attend the hearing. During the previous first hearing, I specifically advised both parties about the new reconvened hearing date on November 4, 2016 at 9:30 a.m. and confirmed that both parties were available to attend. The tenant's lawyer specifically advised that both she and the tenant were available to attend the previous second hearing at the above date and time. I notified both parties that I would be mailing my interim decision to them along with the notice of hearing containing the teleconference codes to call into the previous second hearing.

Only the landlord's agent attended the previous second hearing, not the tenant or his lawyer. Therefore, I issued a final, legal, binding decision dismissing the tenant's entire application without leave to reapply. As the tenant's application to cancel the 1 Month Notice was dismissed, the landlord was entitled to an order of possession as per section 55 of the *Act*. However, the landlord verbally confirmed during the previous second hearing, that no order was required because possession had already been obtained by the landlord. The tenant's application for an order of possession for the rental unit, was also dismissed without leave to reapply. This information was contained in my final decision.

#### Preliminary Issue – Current Hearing

During this current hearing, the tenant's lawyer advised that she did not receive a copy of my interim decision from the previous first hearing on September 26, 2016. When I advised the tenant's lawyer that I had already notified her during the previous first hearing about the time and date of the hearing on November 4, 2016 at 9:30 a.m., she said that she knew the date and time but did not have the call-in codes for that hearing.

The tenant's lawyer said that she did not receive the final decision from the previous second hearing either. She said that she called the RTB 55 times in order to inquire but she was unsuccessful. She claimed that she could get her assistant to swear an affidavit to this effect, yet she did not provide any written evidence for this current hearing.

I notified both parties that I could not deal with the tenant's previous application at this current hearing. I advised them that a final, legal, binding decision had already been made regarding the tenant's previous application and it was not properly before me at this current hearing.

At this current hearing, the landlord confirmed that the tenant had moved out of the rental unit and handed the keys back to the landlord on October 1, 2016. The tenant's lawyer confirmed that the tenant moved out of the rental unit under protest. She said he was still disputing the landlord's notices to end tenancy.

As per my final decision made at the previous second hearing, the tenant's application to cancel the 1 Month Notice was dismissed along with the tenant's application for an order of possession to the rental unit.

As the tenant already vacated the rental unit and the tenant is not entitled to an order of possession to the rental unit, the tenant's current application to cancel the landlord's three notices to end tenancy is moot. During the current hearing, I advised both parties that the tenant's entire application to cancel the landlord's 10 Day Notice, 1 Month Notice and 2 Month Notice, as well as to recover the \$100.00 filing fee, was dismissed without leave to reapply.

Preliminary Issue – Inappropriate Behaviour by the Tenant's Lawyer during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

*Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

At the outset of the hearing, I advised both parties that they were not to interrupt while others were talking and they would be given a chance to speak. Throughout the hearing, the tenant's lawyer repeatedly interrupted me, became increasingly upset and yelled at me. The tenant's lawyer displayed rude, disrespectful and inappropriate behaviour. I warned the tenant's lawyer to stop her inappropriate behaviour or she would be disconnected from the hearing. I reminded the tenant's lawyer about her obligation to represent the tenant, her higher ethical obligations as a lawyer and Officer of the Court, and her obligation to respect me as an Arbitrator and the RTB legal process. However, I allowed her to attend the full hearing, despite her inappropriate behaviour, in order to provide her and the tenant with an opportunity to present their submissions.

I caution the tenant's lawyer not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and she may be excluded from future hearings.

### 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 29, 2016

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Residential Tenancy Branch

