



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The landlord did not participate in the conference call hearing, which lasted approximately 10 minutes. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants testified that on December 2, 2016 they forwarded the tenant's application for dispute resolution hearing package via registered mail to the landlord which was returned to them unclaimed. The tenants provided a Canada Post receipt and tracking number as proof of service. The address used for service was the landlord's service address as provided on the tenancy agreement. Section 90 of the *Act* deems a party served with documents five days after mailing even if the recipient does not pick up the mail.

Based on the testimony of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application December 7, 2016, the fifth day after its registered mailing.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

### Background and Evidence

The tenants testified that this tenancy began on August 1, 2015, fixed term until July 1, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$775.00 is payable on the first of each month. The tenants remitted \$375.00

for the security deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

The tenants acknowledged personal receipt of the landlord's 1 Month Notice on November 25, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant is repeatedly late paying rent
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at risk
- the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice. Because the landlord did not attend the hearing I find he has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 1 Month Notice.

### Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

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: January 13, 2017

---

Residential Tenancy Branch

