



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC O

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 26, 2017. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause and for other unspecified relief.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant; despite this hearing being convened to hear the matters pertaining to the Tenant's application for Dispute Resolution.

The Landlord provided affirmed testimony that the Tenant had blended his name with the owner's name as the one named respondent. Accordingly, the style of cause on this Decision was corrected to reflect both correct names, pursuant to section 64(3)(c) of the Act.

### Issue(s) to be Decided

1. Has the Tenant proven the merits of his application for Dispute Resolution?
2. If not, should the Landlord be granted an Order of Possession?

### Background and Evidence

The Landlord testified the 1 Month Notice was issued on December 22, 2016 when it was posted to the Tenant's door.

The Tenant submitted a copy of the 1 Month Notice into evidence which supports that it was issued pursuant to Section 47(1) of the Act. The Notice listed an effective date of February 01, 2017 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Landlord disputed the Tenant's application for Dispute Resolution where the Tenant wrote that he received the 1 Month Notice on January 1, 2017. He asserted the Tenant received the Notice on December 22, 2016. He was aware the Tenant had not filed his application within the 10 Day time limit.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the *Act* and I find that it was served upon the Tenant in a manner that complies with section 89 of the *Act*.

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing.** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant the telephone line remained open for twelve minutes while the phone system was monitored and no one on behalf of the Tenant called into the hearing during this time.

The 1 Month Notice to end tenancy includes important information for tenants as follows:

*TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE.*

[Reproduced as written on page 1 of the 1 Month Notice]

*You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.*

*If you do not file an Application for Dispute Resolution within 10 days, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of this Notice (You can move out sooner). If you do not file the Application or move out, your landlord can apply for an Order of Possession that is enforceable through the court.*

[Reproduced as written on page 2 of the 1 Month Notice]

After consideration of the forgoing, even if the Tenant had not received the Notice until January 1, 2017, I find the Tenant failed to file his application for Dispute Resolution within the required 10 day time frame; as his application was not filed until January 26, 2017. Furthermore, the Tenant failed to appear and present the merits of his application. Accordingly, I find the Tenant's application to be meritless and it was dismissed without leave to reapply.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having dismissed the Tenant's application and finding the Notice to be issued in accordance with the *Act*, the Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

### Conclusion

The Tenant was not success with his application and the Landlord was granted an Order of Possession.

This decision is final, legally binding, and 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: February 27, 2017

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Residential Tenancy Branch