



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, CNR, DRI, PSF, RPP, RR, FF, SS, O

### Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to serve documents or evidence in a different way than required by the Act pursuant to section 71;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65;
- an order regarding a disputed additional rent increase pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served to the landlord the notice of hearing package in person on May 3, 2017. The tenant stated that the landlord was served with the submitted documentary evidence in person on May 20, 2017. The landlord has disputed this claim stating that no documentary evidence was received by the landlord. The landlord also stated that because of this the landlord has not submitted any documentary evidence. The tenant stated that she is not able to provide any evidence to support her claim that the landlord was served

with the submitted documentary evidence. The burden of proof lies with the tenant in this case and as such, the tenant has failed to provide sufficient evidence to satisfy me that the documentary evidence was served upon the landlord. The tenant's documentary evidence as such is excluded from consideration for this hearing. I accept the undisputed affirmed evidence of both parties regarding the service of the notice of hearing package and as such find that both parties have been properly served as per sections 88 and 89 of the Act.

#### Preliminary Issue(s)

At the outset it was clarified with both parties what the tenant had made in her application. The clarified that she was not seeking more time (MT) to make an application to cancel a notice to end tenancy as this was selected in error by the tenant. The tenant clarified that she was not seeking to cancel a notice to end tenancy for unpaid rent (CNR) as she did not receive a notice to end tenancy issued for unpaid rent. The tenant clarified that she was not seeking to dispute an additional rent increase (DRI) as the landlord did not serve her with a notice of rent increase in the approved form. The tenant clarified that she was not seeking an order allowing her to serve the landlord documents (SS) in a different way than required by the Act. As such, the above noted selections made in error by the tenant were cancelled by the tenant and require no further action.

It was then clarified with both parties that the tenant's request to cancel the 1 Month Notice was unrelated to the tenant's request(s): to provide services or facilities agreed upon but not provided, return of the tenant's personal property and to reduce rent for services or facilities agreed upon but not provided by the landlord. RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied an order for the landlord to provide services or facilities, reduce rent for the services or facilities not provided and return personal property. As these sections of the tenant's application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause, I dismiss these sections of the tenant's claim with leave to reapply. The hearing shall proceed on the tenant's application to cancel the notice to end tenancy issued for cause.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

#### Background, Evidence and Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served to the tenant a 1 Month Notice dated April 15, 2017 which displays an effective end of tenancy date of May 15, 2017 and was being given for:

Tenant is repeatedly late paying rent.

The landlord provided testimony with the assistance of her daughter, K.W. stating that there was no signed tenancy agreement nor has there ever been one. The landlord stated that the tenant is her adult daughter and that she served the 1 Month Notice in the hopes of regaining a portion of her home to rent to a tenant. The tenant disputes this stating that there is a tenancy agreement in that she provides services in lieu of rent to the landlord. The landlord disputed this claim. Both parties confirmed that there is no signed tenancy agreement. The tenant argued that she provides services to the landlord by buying groceries and running errands for the landlord. The landlord argued that the tenant is her daughter and not her tenant even though she issued the 1 Month Notice.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The tenant is unable to provide sufficient evidence that a tenancy relationship was created between these two parties as opposed to a mother-daughter relationship regarding the family home. The tenant in this case relied upon direct testimony that she “ran errands and bought groceries” in lieu of rent as part of a service for rent agreement with the landlord. The tenant stated that she had proof in the form of emails and texts that would show that she was a tenant, but has not provided any. As such, I find that the tenant has failed to provide sufficient evidence of a tenancy agreement with the landlord. The tenant’s application is dismissed for lack of jurisdiction.

### Conclusion

The tenant’s application is dismissed.

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: June 07, 2017

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Residential Tenancy Branch