



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC OPC MND FF

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the Act"). The landlords applied for: an Order of Possession for Cause pursuant to section 55; a monetary order for damage to the rental unit pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Pursuant to the Act, the tenant applied for: cancellation of the landlords' 1 Month Notice to End Tenancy for Cause pursuant to section 47; and authorization to recover the filing fee for this application from the landlords pursuant to section 72

Both parties attended this hearing. While the landlords attended at the outset of the hearing, the tenant attended the hearing at approximately 11:09am. The tenant confirmed receipt of the landlord's Dispute Resolution Hearing package with notice of hearing. However, the tenant was confused as to the nature of the application to end her tenancy. The landlords were unable to provide sufficient testimony or other evidence to prove that the tenant had been served with the appropriate notice to end tenancy.

### Preliminary Issue: Service of 1 Month Notice to End Tenancy for Cause

At the outset of this hearing (11:00 am), two representatives for the landlord were on the teleconference line. Prior to the tenant joining the line and over the course of approximately 5 minutes, the landlords repeatedly asked for additional time before beginning the hearing. The landlord's representatives were unable to locate their documentary/evidentiary materials for this hearing and therefore could not provide evidence with respect to service of documents.

At approximately 11:09 am, the tenant joined the teleconference. When she was asked about the service of any Notice to End Tenancy from the landlords, the tenant testified that she had received a Notice to End Tenancy in May 2017 but was unable to specify the date. The tenant also testified that she was uncertain as to the reason she was being asked to vacate the residence.

Over the course of the 14 minute teleconference dispute resolution hearing, the landlords provided three different dates that they had served notices to end tenancy to the tenant. None of those dates reflected the date on the notice to end tenancy that had been submitted for this hearing. The tenant provided one date that she had received a notice however it was not the date on the notice provided for this hearing. Furthermore, the notice that the tenant raised referred to a different ground to end tenancy than the notice before me. Finally, neither the tenant nor the landlords were able to identify an appropriate timeline over which a notice to end tenancy would normally apply.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process to notify the respondent of the application, the hearing date and time as well as the information related to the application. Service of documents is restricted by timelines and methods of service to underscore its importance. It is essential that a party be able to **prove** that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing.

Residential Tenancy Policy Guideline No. 12, in considering the terms of service at section 88 to 90 in the *Act* states that parties must be prepared to **prove service under oath** when required. In these circumstances, the two landlords in attendance were unable to answer questions with respect to their notice or provide any reasonably accurate testimony regarding the service of their notice to end tenancy. The documentary evidence submitted by the landlords included digital evidence to illustrate damage to the rental unit as well as some text messages between the tenant and the landlord. I find that the landlords were unable to prove service of the application for this hearing.

Prior to considering the details and substance of an applicant's claim, I must be satisfied that the respondent to the application has been sufficiently served the other party, allowing that party an opportunity to know the case against them prior to the dispute resolution hearing date. Based on the lack of detail, certainty in testimony and the lack of documentary evidence submitted by the landlords to prove that the tenant was served with the Notice to End Tenancy upon which they rely, I find that the landlords have not sufficiently proven that the tenant was in fact served in accordance with the

Act allowing the tenant to understand the nature of the application to end her tenancy. Therefore, I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's application **with leave to reapply**.

As the tenant applied to cancel the notice to end tenancy issued by the landlord and, as the landlord has failed to support that notice to end tenancy, I grant the tenant's application to cancel the notice to end tenancy. The tenancy shall continue.

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: September 18, 2017

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Residential Tenancy Branch