



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1155966 ALBERTA LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes           CNC, OLC, O

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 1 Month Notice to End for Cause issued July 17, 2017 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement and other unspecified relief.

The hearing was conducted by teleconference on October 10, 2017 at 9:00 a.m. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and the Application on July 30, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of August 4, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are

reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The Tenant sought unspecified “other” relief on his Application for Dispute Resolution. He also filed a Monetary Orders Worksheet wherein he claimed recovery of the filing fee as well as the cost to mail his materials to the branch as well as to the Landlord. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* and *Rule 4.2* of the *Residential Tenancy Rules of Procedure* I amend the Tenant’s Application to claim this relief.

### Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement?
3. Should the Tenant recover the filing fee and the cost to mail his materials to the branch and the Landlord?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming this one year fixed term tenancy began December 1, 2016. The agreement further provides that following the expiration of the fixed term the tenancy is to continue on a month to month basis.

The Tenant testified that he received the Notice on July 17, 2017. The Notice was not before me during the hearing. On his Application for Dispute Resolution he wrote that the reasons cited on the Notice were that the Landlord believes the Tenant caused damage to the rental unit by painting. The Tenant testified that since he served his Application materials on the Landlord the Landlord has appeared to have “let this go” and not mentioned it again.

The Landlord failed to attend the hearing to provide evidence in support of the Notice.

### Analysis

*Residential Tenancy Branch Rules of Procedure* Rule 7.8 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord bears the burden of proving the reasons cited in the Notice. As the Landlord failed to attend the hearing, **I grant the Tenant’s Application and hereby cancel the Notice.** The tenancy shall continue until ended in accordance with the *Act*.

The parties are reminded of *Residential Tenancy Policy Guideline 1: Landlord & Tenant—Responsibility for Residential Premises* which provides as follows.

**RENOVATIONS AND CHANGES TO RENTAL UNIT**

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

The parties are also reminded of *Residential Tenancy Policy Guideline 40: Useful Life of Building Elements* which provides that interior paint has a useful building life of four years.

As discussed during the hearing, the cost of registered mail and other mail is not recoverable under the *Residential Tenancy Act*.

Having been successful in his application to cancel the Notice, I grant the Tenant recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. I authorize the Tenant to reduce his next months' rent by \$100.00 as compensation for this amount.

Conclusion

The Tenant's Application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant is permitted to reduce his next months' rent by \$100.00 as recovery of the filing fee.

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: October 10, 2017

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Residential Tenancy Branch