



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for End of Employment (the “One Month Notice”).

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the witness for the Tenant (the “Witness”), and the Landlord; all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”). However, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at their individual addresses and e-mailed to them at the e-mail addresses provided by them in the hearing.

### Preliminary Matters

At the outset of the hearing the Tenant, who is the Applicant, stated that he only received the Landlord’s documentary evidence on Friday May 11, 2018, which is five days prior to the hearing, and that due to its late receipt and his visual impairments, he

did not have sufficient time to consider and respond to this evidence. As a result, the Tenant requested that it be excluded from consideration.

The Landlord, who is the Respondent, testified that he sent his evidence to the Applicant by regular mail on May 4, 2018, and therefore it should have been received by him on May 9, 2018, in accordance with the Rules of Procedure timelines. However, the Landlord did not provide any documentary or other corroborative evidence that this mail was sent on May 4, 2018. The Applicant also denied that it was received by mail and stated that it was simply placed in his mailbox. The Applicant stated that there is no post mark on the envelope, which supports his argument that it was never mailed, however, he did not provide any documentary or other corroborative evidence in support of this testimony.

Rule 3.15 of the Rules of Procedure states that the Respondent must ensure evidence that they intend to rely on at the hearing is served on the Applicant and submitted to the Residential Tenancy Branch (the "Branch") as soon as possible and must be received by the Applicant and the Residential Tenancy Branch not less than seven days before the hearing. Rule 3.16 of the Rules of Procedure states that at the hearing, the Respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and the Rules of Procedure.

Although the parties provided conflicting testimony with regards to the service and receipt of the Landlord's documentary evidence, ultimately I find that it was incumbent upon the Landlord to satisfy me, on a balance of probabilities, that the evidence before me for consideration from him was sent to and received by the Tenant in compliance with the Act and the Rules of Procedure. As the Landlord failed to provide documentary or other evidence in support of his testimony that the evidence was mailed to the Tenant on May 4, 2018, and either received by the Tenant or deemed received by the Tenant under the Act in compliance with Rule 3.15 of the Rules of Procedure, I therefore accept the Tenant's testimony that it was not received until May 11, 2018. I also accept the Tenant's testimony that he therefore did not have sufficient time to consider and respond to this evidence.

The ability to know the case against you and provide evidence in your defence is fundamental to the dispute resolution process. Based on the above, I find that it would be a breach of both the principles of natural justice and the Rules of Procedure to accept the Landlord's documentary evidence for consideration in this matter. As a result, I have excluded the Landlord's documentary evidence from consideration.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If the Tenant is not successful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on August 1, 2005, at a monthly rent amount of \$400.00, and that a security deposit in the amount of \$200.00 was paid. However, the parties disagreed that about the terms of the tenancy agreement. The Landlord testified that at the time the tenancy agreement was entered into by both parties, there was an agreement that the rental unit was to be provided to the Tenant as part of his duties as a caretaker and that he would receive a \$100.00 per month rent reduction for services rendered. The Tenant denied that there was any agreement in place for him to act as a caretaker or perform duties on the property at the start of the tenancy. Instead, the Tenant stated that it was not until September 2006, that he was approached by the Landlord and asked to perform small duties around the property for a \$100.00 rent reduction. Despite the disagreement regarding when the Tenants duties began, both parties agreed that the Tenant has been providing services on the property for many years and receiving compensation in the form of rent reductions. A copy of the tenancy agreement was not before me for consideration.

Although the Landlord stated that there is a written agreement in place regarding the Tenant's duties as a caretaker on the property, the Tenant denied that any such agreement was signed. A copy of the agreement was not before me for consideration.

The Landlord testified that near the end of February 2018, the Tenants employment as a caretaker was ended and as a result, he was served with a One Month Notice. The Tenant denied that he was told that his employment was ending and stated that he only found out that his employment had ended when he was served with the One Month Notice. Further to this, the Tenant argued that the Landlord simply wanted to end his tenancy as they have had previous discussions about the state of cleanliness in his rental unit.

The copy of the One Month Notice in the documentary evidence before me from the Tenant is signed by the Landlord but does not contain a signature date. However, the parties agreed that it was personally served on the Tenant on February 26, 2018. The

One Month Notice has a vacancy date of March 31, 2018, and states the reason for ending the tenancy is because the tenant's rental unit is part of the tenant's employment as a caretaker, manager, or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit to a new caretaker, manager, or superintendent.

### Analysis

I have reviewed all relevant documentary evidence and oral testimony and I find that the Tenant was personally served with the One Month Notice on February 26, 2018.

Section 48 of the *Act* states a landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

- (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
- (b) the tenant's employment as a caretaker, manager or superintendent is ended, and
- (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

Although the parties agreed that the Tenant completes some tasks associated with the care of the property in exchange for a rent reduction, there was disagreement between them regarding whether the Tenant is in fact a caretaker, manager or superintendent of the residential property, when this arrangement began, and whether or not the rental unit was provided to the tenant only for the term of his employment. No documentary evidence was before me establishing the conditions of the Tenants employment arrangement with the Landlord, or confirming that his employment had ended. Further to this, a copy of the tenancy agreement signed at the start of the tenancy was not before me for consideration.

The ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the *Act* to issue the notice. Having carefully reviewed the evidence before me from both parties, I find that the Landlord has failed to establish, on a balance of probabilities, that they had cause to end the tenancy under section 48 of the *Act* as I am not satisfied that the Tenant is in fact a caretaker, manager or superintendent of the residential property, that any employment arrangement with the Landlord had ended prior to the service of the One Month Notice, or that the rental unit was provided to the tenant for the term of his

employment. As a result, I order that the One Month Notice is cancelled and of no force or effect.

Conclusion

I order that the One Month Notice is cancelled. As a result, I order that the tenancy continue in full force and effect 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: May 17, 2018

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Residential Tenancy Branch