



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNL, FF

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated April 4, 2018.  
The parties failed to provide a copy of the Notice to End Tenancy.
- b. An order that the landlord comply with the Act, regulations and/or tenancy agreement.
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of the Tenant and in the absence of the landlord. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the 2 month Notice to End Tenancy was sufficiently served on the Tenant by posting on April 4, 2018. However, the tenant failed to upload any documentary evidence including the Notice to End Tenancy. . Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the landlord on April 21, 2018. With respect to each of the applicant's claims I find as follows:

The landlord did not attend the hearing. However the landlord uploaded materials indicating the parties had mutually agreed to end the tenancy.

### **Preliminary Matter:**

The tenant testified he vacated the rental unit in May 2018 after he was forced to do so by the landlord. The tenant stated he had not interest in reinstating the tenancy. The tenant sought an adjournment so that he could file an Amendment to seek monetary claims against the landlord.

Rule 1 of the Rules of Procedure provides as follows:

Rule 1 – Objective

### 1.1 Objective

The objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

Rule 2.3 of the Rules of Procedure provide as follows:

### 2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Rule 4 of the Rules of Procedure provide for the Amending of an Application. It requires that an Amendment to the Application be filed and served on the other side not less than 14 days prior to the date of the hearing unless it involves a situation that could reasonably be anticipated such as the amount of rent owing has been increased since the time of the Application for Dispute Resolution. It also provides that a respondent be given the opportunity to raise an objection at the hearing to an Amendment to an Application for Dispute Resolution.

Rule 7.9 provides as follows:

### 7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party

After considering a lengthy submission by the Tenant I determined this is not an appropriate case to grant an adjournment for the following reasons:

- Rule 1.1 provides that the objective of the Rules of Procedure is to ensure a fair, efficient and consistent process. An adjournment would delay the determination of this matter.
- The Tenant no longer wishes an order that would reinstate the tenancy. He is now seeking a monetary order. The claim for a monetary order includes a claim for compensation under section 51 of the Act and the recovery of his security deposit. Those claims are not related an application for an order to cancel a 2 month Notice to End Tenancy as they are based on the tenancy coming to an end.
- An adjournment is not likely to result in a resolution of the dispute between the parties.
- The tenant had over a month since he vacated the rental unit to file an Amendment to his Application for Dispute Resolution but failed to do so.
- The adjournment would not result in a party being given a fair opportunity to be heard.
- A much more efficient way of dealing with this situation is for the Tenant to file a new Application for Dispute Resolution seeking all of the monetary claims that he wishes to make. This would give him the opportunity to obtain the evidence he might be relying on.

In the circumstances I determined an adjournment was not appropriate and I dismissed the tenant's application for an adjournment. The tenant has the right to file a new Application for Dispute Resolution making the various monetary claims he wishes to make.

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated April 4, 2018?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on April 1, 2018. The tenant testified the rent was \$850 per month payable in advance on the first day of the month. He paid a security deposit of \$400 at the start of the tenancy.

The tenant testified the 2 month notice was not proper. It states the landlord or the landlord's family intends to move in. He testified he was forced to leave by gun point in early May. The police advised him for safety reasons that he should vacate. He has no

desire for an order to reinstate the tenancy and no desire to resume residence in the residence.

Analysis and Order

As the tenant has no desire for an order to reinstate the tenancy. I ordered that his application to cancel the one month Notice to End Tenancy be dismissed.

If the tenant had been successful in this application he would have lost the right to bring claims under section 51(1) and (2) of the Residential Tenancy Act.

**This decision is final and binding on the parties.**

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 19, 2018

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Residential Tenancy Branch