



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EY PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 28, 2018 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated August 28, 2018 (the “Notice”).

The Tenant appeared at the hearing. Nobody attended the hearing for the Landlord. The hearing process was explained to the Tenant and I answered his questions in relation to the process. The Tenant provided affirmed testimony.

Both the Landlord and Tenant had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant testified that he mailed the hearing package and evidence to the Landlord on September 3, 2018. He said he sent the package to the business address for the Landlord as found on their website and on the tenancy agreement. The Tenant had submitted a receipt in relation to this. The receipt does not have a tracking number on it and the Tenant acknowledged that he may not have sent the package by registered mail. The Tenant testified that he knew the Landlord received the package as they served him with their evidence package.

The Landlord has uploaded an evidence package using the number provided to them. The package references the file number and states “SUBMITTED EVIDENCE IN RESPONSE TO DISPUTE RESOLUTION HEARING DATED OCTOBER 15/18” at the top of the first page which is an index. This package does appear to be from the Landlord based on the nature of the contents. For example, it includes a statement from the caretaker of the building.

Based on the undisputed testimony of the Tenant, and the receipt submitted, I accept that the Tenant mailed the hearing package and evidence to the Landlord on September 3, 2018. I note that the receipt shows the postal code of where the package was sent and this matches the postal code for the Landlord as noted on the tenancy agreement submitted.

I am satisfied the Landlord received the hearing package and evidence. I accept the undisputed testimony of the Tenant that the Landlord served an evidence package for this hearing on him. Further, the Landlord submitted evidence. The package submitted refers to the correct file number and hearing date, information that would have been included in the hearing package.

Pursuant to section 71(2)(c) of the *Residential Tenancy Act* (the "*Act*"), I find the hearing package was sufficiently served on the Landlord despite it being served by regular mail rather than registered mail as required under section 89 of the *Act*. I note that regular mail is an acceptable form of service for evidence and find the Tenant's evidence was served in accordance with section 88(c) of the *Act*. Further, based on our records, the undisputed testimony of the Tenant and the receipt, I find the hearing package and evidence were served in accordance with rule 3.1 of the Rules of Procedure and in sufficient time to allow the Landlord to prepare for, and appear at, the hearing.

I advised the Tenant I would provide my decision in relation to service in my written decision and proceeded with the hearing. As stated above, I am satisfied of service and will proceed to consider the Application.

#### Issue to be Decided

1. Should the Notice be cancelled?

#### Background and Evidence

The Tenant had submitted a written tenancy agreement. It is between the Landlord and Tenant, as well as others, regarding the rental unit. The tenancy started August 1, 2017 and was for a fixed term ending July 31, 2018. The tenancy then became a month-to-month tenancy. The agreement is signed by all parties.

The Tenant testified that he was served with one One Month Notice to End Tenancy for Cause and this is what was submitted to me. The Notice is addressed to the Tenant and a second individual. It refers to the rental unit. It has an effective date of

September 30, 2018. It states the grounds for the Notice as extraordinary damage, failure to do repairs and breach of a material term of the tenancy agreement.

The Tenant testified that he received the Notice August 28, 2018 and filed the Application the same day.

The teleconference started at 11:00 a.m. and ended at 11:22 a.m. Nobody appeared for the Landlord during this time.

### Analysis

I accept the undisputed testimony of the Tenant and find he received the Notice August 28, 2018 and filed the Application the same day. The Tenant therefore disputed the Notice within the 10-day time limit set out in section 47(4) of the *Act*.

Pursuant to rule 6.6 of the Rules, a landlord has the onus to prove the grounds for ending the tenancy when a tenant applies to cancel a notice to end tenancy.

Here, the Landlord did not appear at the hearing to provide evidence to prove the grounds for the Notice. In the absence of evidence from the Landlord, the Notice has not been proven. Therefore, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until 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 *Act*.

Dated: October 15, 2018

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Residential Tenancy Branch