



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WESTERN COMMUNITY SENIORS LOW COST HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC OPC FF

### **Introduction**

Both parties and witnesses attended the hearing and gave sworn testimony. The One Month Notice to End Tenancy is dated October 5, 2018 to be effective November 30, 2018 and the tenant confirmed it was served personally on October 5, 2018. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated October 10, 2018 and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 for the purposes of this hearing. The tenant objected that the landlord did not serve their evidence until November 16, 2018 which violated the Rules of Procedure and there was insufficient time to prepare. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To recover filing fees for this application.

### **Issue(s) to be Decided:**

Did the landlord serve their evidence in time for this hearing? If so, has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Background and Evidence**

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced May 1, 2006, it is a month to month tenancy, rent is \$468 a month (as subsidized) and a security deposit of \$150 was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord

has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reasons:

1. The tenant or a person permitted on the property by the tenant:
  - (a) has significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - (b) Has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - (c) Has put the landlord's property at significant risk.
2. The tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property.
3. There has been a material breach of the tenancy agreement that was not corrected within reasonable time to do so.

When the tenant objected to the late service of evidence, the landlord pointed out that a summary of the situation had been attached to the Notice to End Tenancy and the tenant had had the warning letters delivered to her at the time. Therefore, she knew the evidence against her although it was not served until November 16, 2018. I asked the landlord to list the evidence that was not served in time. They listed many reports and costs associated with the incident.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. Rule 4.1 of the Residential Tenancy Branch Rules of Procedure deals with service of the respondent's evidence. The landlord is the respondent in this case as the tenant filed the application to dispute the Notice to End Tenancy. Rule 4.1(a) states that evidence the respondent intends to rely upon must be served as soon as possible and *at least 5 days* before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure. The Definition section of the Rules states that in the calculation of time expressed as "at least" a number of days, the first and last days must be excluded. As the evidence is that the landlord served the bulk of their evidence on which they intended to rely on Friday, November 16, 2018 and the hearing is on November 22, 2018, I find their evidence was served late. As the Notice to End Tenancy was served

October 5, 2018 and the Application by the tenant filed October 10, 2018, I find there is no evidence of a compelling reason why the evidence had to be served late. I find the late evidence was substantial with reports and estimates of damage so I find it is unfair to the tenant to proceed when they have had so little time to prepare.

I set aside and cancel the Notice to End Tenancy dated October 5, 2018. The tenancy is continued until legally ended in accordance with the Act. As pointed out to the parties in the hearing, the tenancy may be legally ended for any one cause under section 47 of the Act if proven on a balance of probabilities.

**Conclusion:**

The Application of the Tenant is successful. The Notice to End Tenancy dated October 5, 2018 is set aside and cancelled. The tenancy is continued. I find the tenant entitled to recover her filing fee.

**I HEREBY ORDER THAT the tenant may deduct \$100 from her rent to recover 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: November 22, 2018

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Residential Tenancy Branch