



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC  
                                 CNC, MNDCT, MNRT, OLC, RP, RR

### Introduction

This tenancy has been the subject of previous hearings. The file numbers have been included on the front page of this Decision for ease of reference

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order of possession for cause pursuant to section 55.

This hearing also addressed the tenant's cross application for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;

Both parties appeared at the hearing. The landlord was represented by his legal counsel. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Landlord's Application and Evidence

Legal counsel for the landlord submitted that the landlord personally served the tenant with the landlord's application on October 21, 2018. The tenant testified that he did not receive the landlord's application on October 21, 2018. He testified that he received the

landlord's application on October 24, 2018 at 11:00 p.m. The tenant contended that a text thread between him and a friend, which he has included as part of his documentary evidence, establishes that he received the application on October 24, 2018.

Although the text thread the tenant has referred to does not indicate what date the application was received; it does confirm the landlord delivered a package at 11:00 p.m., which is congruent with the tenant's testimony. In the absence of a signed witnessed proof of service from the landlord, I am satisfied beyond a reasonable doubt that the application was personally served and consequently received on October 24, 2018 as claimed by the tenant.

The tenant confirmed he had received the landlord's subsequent evidence package. As the tenant did not raise any issues regarding service of the evidence, I find that the tenant was duly served with these documents in accordance with sections 88 of the *Act*.

#### Preliminary Issue – Tenant's Application and Evidence

The tenant testified that on November 2, 2018 he forwarded the tenant's application for dispute resolution via registered mail to the landlord. The landlord denied receipt of the dispute resolution package.

The tenant provided the Canada Post tracking number into oral evidence to verify this method of service; this number is detailed on the front page of this Decision. The Canada Post website shows that the documents were received and signed for on November 5, 2018. Therefore, based on the evidence before me, I find the landlord was served with the tenant's application pursuant to Section 89(1) (c) of the *Act*.

The landlord confirmed receipt of the tenant's subsequent evidence package. As the landlord did not raise any issues regarding service of the tenant's evidence, I find that the landlord was duly served with these documents in accordance with sections 88 of the *Act*.

#### Preliminary Issue – Sever

Rule 2.3 of the Residential Tenancy Branch *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 1 Month Notice. Accordingly

I find the remaining portion of the tenant's application must be severed and must be dealt with separately through an application. Therefore the remaining portion of the tenant's application is dismissed with leave to reapply.

#### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for breach of an agreement with the landlord?

#### Background and Evidence

The landlord's legal counsel submitted that the landlord personally served the tenant with the 1 Month Notice, dated September 2, 2018, on the same date. A witnessed proof of service, signed on September 2, 2018, formed part of the landlord's documentary evidence.

The tenant denied receipt of the 1 Month Notice on September 2, 2018. He testified that the 1 Month Notice was only brought to his attention during the last hearing held on October 1, 2018. The tenant testified that he did not receive an actual copy of the 1 Month Notice until October 24, 2018 at which time he discovered it in the landlord's application package.

#### Analysis

The parties have provided conflicting testimony in relation to service of the 1 Month Notice, however the signed witnessed proof of service submitted by the landlord has convinced me on the balance of probabilities that the tenant was served the 1 Month Notice on September 2, 2018.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Although the tenant filed an application to dispute the 1 Month Notice, the tenant did not file the application within 10 days. The 1 Month Notice was deemed served September 2, 2018 which allowed the tenant until September 12, 2018 to file his application. The tenant filed his application on November 2, 2018, 51 days after the allowable time.

Based on the 1 Month Notice before me, I find that the tenant was served with an effective notice.

For the reasons stated above, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. I find that the landlord is entitled to an order of possession.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

The remaining portion of the tenant's application is dismissed with leave to reapply.

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 29, 2018

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Residential Tenancy Branch