



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC PSF

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*; and
- an order that the landlord provide services or facilities required by the tenancy agreement or the *Act* pursuant to section 62 of the *Act*.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

As only the tenant attended the hearing, I asked the tenant to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he had served the landlord with the notice of this hearing and his evidence by Canada Post registered mail on November 19, 2018, and referred to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. With the agreement of the tenant, I accessed the Canada Post website to confirm that the tenant's notice of this hearing was delivered. As such, I find that the landlord was served with the documents for this hearing in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Amendment of Tenant’s Application

The tenant advised that he had fixed the broken lock on his mailbox on his own, as he had asked the landlord three times to fix it without response.

Therefore, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant’s application to withdraw his claim pertaining to an order for the landlord to provide services/facilities as the tenant resolved this issue by himself prior to the hearing.

Issue(s) to be Decided

Should the landlord’s One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Background and Evidence

The tenant testified that he received the landlord’s One Month Notice posted on the door of his rental unit on November 13, 2018.

A copy of the One Month Notice dated November 13, 2018, submitted into evidence by the tenant, states an effective move-out date of December 13, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*Tenant or a person permitted on the property by the tenant has (check all boxes that apply):*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

*Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord has provided the following details in the “Details of Cause” section of the notice:

*Oct 29 2018 noise complain [sic] from other tenant*  
*oct 30 noise complain [sic] from other tenant*

The tenant testified that on November 19, 2018, he filed an Application for Dispute Resolution to dispute the One Month Notice. The tenant submitted documentary evidence in support of his dispute of the notice, citing concerns that he felt the notice was retaliatory for having requested repairs be made to his mailbox lock.

The landlord did not attend the hearing nor did the landlord submit any evidence in advance of the hearing.

### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was in receipt of the landlord's One Month Notice on November 13, 2018. The tenant filed an application to dispute the notice on November 19, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the tenant in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Accordingly, in the absence of any testimony or evidence from the landlord, who bears the burden of proof in this matter, I find that the landlord has failed to prove the grounds for issuing the One Month Notice.

Therefore, the tenant's application is successful and the landlord's One Month Notice dated November 13, 2018 is cancelled and of no force or effect.

The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated November 13, 2018 is cancelled and of no force or effect, and this tenancy shall continue 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: January 03, 2019

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Residential Tenancy Branch