



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNL, OLC

### **Introduction**

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of property. The tenant also applied for an order directing the landlord to comply with the *Act*.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. In addition to attending the hearing themselves, the landlords were also represented by their agent.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. However, the tenant stated that the landlord had served his evidence by registered mail on December 31, 2018 and that he had received the package on January 04, 2019. The tenant stated that he has not had enough time to respond to the landlord's evidence.

Rule 3 of the *Residential Tenancy Branch Rules of Procedure* addresses serving the application and submitting and exchanging evidence.

Section 3.15 states that the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 3.12 states that the arbitrator may refuse to accept evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the *Act*, Rules of Procedure or an order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

The purpose of serving evidence to the applicant in a timely manner is to respond to the applicant's evidence and to provide the applicant with an opportunity for rebuttal.

Upon review of the landlord's evidence, I find that the demolition permit was issued on July 16, 2018. The landlord served the tenant with the four month notice to end tenancy on October 28, 2018. The landlord did not provide any explanation of why a copy of the permit was not served on the tenant along with the notice to end tenancy.

In addition, the landlord further failed to serve a copy of the permit in a timely manner pursuant to Rule 3.17 thereby depriving the tenant of a window of at least 7 days to respond to the landlord's evidence.

I find that the landlord has not provided sufficient reason why he could not have served evidence to the tenant in a timely manner and prior to December 31, 2018. In this case the tenant indicated that he would be rebutting some of the landlord's evidence. Since the tenant did not have adequate time to respond to the landlord's submissions, I am unable to consider the landlord's evidence during this proceeding.

Accordingly, I grant the tenant's application and dismiss the notice to end tenancy based on the landlord's failure to provide the tenant with a copy of his evidence in a timely manner and not based on the merits of the case.

### **Conclusion**

The notice to end tenancy is set aside.

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 10, 2019

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Residential Tenancy Branch