



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute codes      CNR CNC OLC

### Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of a One Month Notice to End Tenancy For Cause (the One Month Notice), pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlord did not attend this hearing, although I waited until 9:45 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The tenant filed three separate applications for each of the remedies sought as per above. The tenant testified that she served the landlord with a copy of each of the Applications for Dispute Resolution and Notice(s) of Hearing by placing a copy in the mailbox of the landlord's residence. Each application was served a day or two after being filed.

A review of the file audit notes shows that on December 20, 2018, the landlord contacted the Residential Tenancy Branch (the "RTB") and at this time it was discovered that the tenant had filed three separate applications all which were scheduled with different Arbitrators and for two separate dates. The landlord was advised that the matter would be corrected and that the RTB would be in contact. On December 21, 2018 a new Notice of Hearing was e-mailed to both parties by which all three of the tenant's applications were combined into this one hearing date and time. I

note that the landlord has also submitted evidence in response to the tenant's applications.

As per section 89 of the Act, leaving an application for dispute resolution in a mailbox is not a valid method of service. However, based on the evidence above, I am satisfied that the landlord did receive each of the tenant's Applications for Dispute Resolution and was notified of this hearing date by the RTB. The hearing proceeded in the absence of the landlord.

In the hearing, the tenant withdrew her application requesting an order for the landlord to comply with the Act.

### Issues

Should the landlord's 10 Day Notice and One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

The 10 Day Notice subject to this dispute is dated December 6, 2018. The tenant's application to cancel the 10 Day Notice was filed on December 6, 2018 within the time period permitted under the Act.

The One Month Notice subject to this dispute is dated December 7, 2018. The tenant's application to cancel the One Month Notice was filed on December 10, 2018 within the time period permitted under the Act.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice to End Tenancy.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an

application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

The landlord did not participate in the hearing and as such has failed to provide sufficient evidence to justify the grounds for issuing both the 10 Day Notice and the One Month Notice. Accordingly, the 10 Day Notice dated December 6, 2018 and the One Month Notice dated December 7, 2018, are hereby cancelled and of no force or effect.

### Conclusion

I allow the tenant's application to cancel both the landlord's 10 Day Notice dated December 6, 2018 and the One Month Notice dated December 7, 2018, which are hereby cancelled and of no force or effect. This tenancy continues 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 21, 2019

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Residential Tenancy Branch