



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPC, FFT

### **Introduction**

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued on January 31, 2019 (the "Notice") as well as recovery of the filing fee.

The matter was set for hearing by telephone conference call at 9:30 a.m. on this date. The line remained open while the phone system was monitored for fourteen minutes and the only participant who called into the hearing during this time was the Tenant.

The Landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on February 7, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The tracking information confirms the Landlord signed for the package on February 12, 2019. As such, I find that the Landlord was duly served as of February 12, 2019 and I proceeded with the hearing in their absence.

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

#### **Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

#### **Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Preliminary Matter

The Tenant included the Landlord's house number in his name on the Application for Dispute Resolution. Pursuant to section 64(3)(c) of the *Act* I amend the Tenant's Application to correctly name the Landlord.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recover the filing fee?

Analysis and Conclusion

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

As the Landlord failed to call into the hearing to provide evidence and submissions in support of the Notice, I find the Landlord has failed to meet the burden of proving the reasons for ending the tenancy. As such, I grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

The Tenant has been successful in her Application; I therefore grant her authority to withhold \$100.00 from her next month's rent as recovery of the filing fee pursuant to section 72 of the *Act*.

This decision is final and binding on the parties, except as otherwise provided under the *Act*, and 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: March 15, 2019

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Residential Tenancy Branch