



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Tenant applied to cancel a One Month Notice to End Tenancy for Cause dated March 2, 2019 ("One Month Notice") and for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant appeared at the teleconference hearing and gave affirmed testimony, but no one attended for the Landlord. I explained the hearing process to the Tenant and gave her an opportunity to ask questions. During the hearing I gave the Tenant the opportunity to provide her evidence orally and to direct me to documentary evidence she had submitted. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

Regarding the service of documents, the Tenant said she showed and tried to serve the Application and documentary evidence ("Application Package"), on the Landlord in person, when the Landlord attended the rental unit to repair a screen door in March 2019. However, the Tenant said the Landlord told her that she was cancelling the One Month Notice, so she would not take the Tenant's dispute resolution documents. I find that the Tenant satisfied the requirements of section 89 the Act by trying to serve the Landlord in person this way, even though the Landlord would not take the Application Package with her.

The Tenant provided her email address in the hearing and confirmed her understanding that the decision would be emailed to the Tenant and mailed to the Landlord.

At the outset of the hearing, I advised the Tenant that pursuant to Rule 2.3, I would be severing the monetary claim from the primary issue to be resolved, that being the Tenant's application to cancel the One Month Notice. The Tenant's monetary claim is dismissed with leave to reapply.

Issues:

- Is the One Month Notice valid or should it be cancelled?

Background and Evidence

The Tenant submitted a copy of a tenancy agreement indicating that the tenancy started on April 1, 2018, with a monthly rent of \$1,500.00 due on the first of each month. The Tenant confirmed that she paid a security deposit of \$750.00.

The Landlord did not attend the hearing, despite the evidence before me that the Tenant showed her the Application Package, and told her about the hearing.

The Tenant said the Landlord served her with the One Month Notice that was signed, dated March 2, 2019, had the rental unit address, an effective vacancy date of April 3, 2019, and the reason for the One Month Notice being that the Tenant is repeatedly late paying rent.

The Tenant said she was late paying rent a couple of times, because she was injured in a serious accident. The Tenant said that subsequent to the Landlord serving the One Month Notice on her, the Landlord told the Tenant that she understands why the Tenant was late paying rent and that she prefers to cancel the One Month Notice and continue the tenancy.

The Tenant said that shortly before the hearing, she was at a Service BC Office where she submitted an email dated April 2, 2019, and a text dated April 3, 2019, to the RTB system. The Tenant said that she received both communications from the Landlord and that they confirm the Landlord's intention to cancel the One Month Notice. The Tenant said she tried to cancel the hearing on April 29, 2019, but that she was told she would need written confirmation from both Parties to do this. The Tenant said she thought the next best thing would be to submit the Landlord's messages to her in this regard.

The text message reads:

L: I will mail you a cancel notice

T: Okay

Mon, Apr 1, 6:16 PM

L: Hi [Tenant's name] did you send the rental money yet?

Mon Apr 1, 7:25 PM

T: Yeup! 800

L: Thank you!

Wed. Apr 3, 8:48 PM

L: Hi [Tenant's name], I email it (cancel the notice letter) for you already.

The email is a photograph of a handwritten letter, which states:

April 2, 2019

Hi [Tenant's name] I cancel the one month notice for move out today (April 2, 2019)

Thanks!

[Landlord's name]  
[Landlord's signature]

### Analysis

I find it inappropriate to consider evidence that has not been submitted to the other Party; however, in this case, the evidence came from the other Party, as it contains her name and/or telephone number in the messages. As such, I find that the Landlord is aware of these documents, although she did not know they would be submitted to this hearing. Further, I find that the messages are consistent with the Tenant's testimony of the Landlord's reason for refusing to take the Application Package and for not attending the hearing.

Based on the documentary and testimonial evidence before me, I find that the Parties agreed to cancel the One Month Notice. Further, when a landlord issues a notice to end a tenancy and the tenant applies to dispute the notice, the landlord must prove that there is sufficient cause under the Act to end the tenancy. The Landlord did not attend the hearing to do this.

As a result, I find the One Month Notice is cancelled and that the tenancy will continue until ended in accordance with the Act.

### Conclusion

The Tenant's monetary claim is dismissed with leave to reapply.

The Parties provided evidence of their agreement to cancel the One Month Notice, which I confirmed. I find the tenancy will continue until ended in accordance with the Act and regulation.

This decision is final and binding on the Parties, unless 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: May 1, 2019

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Residential Tenancy Branch