



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing was scheduled for 9:30 a.m. on this date, via teleconference call, to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and several other remedies. The tenants appeared at the hearing; however, there was no appearance on part of the landlord. I confirmed that the correct call-in numbers and participant codes had been provided on the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only persons who had called into this teleconference. I waited until 9:43 a.m. to permit the landlord the opportunity to appear for the hearing but the landlord did not appear and the teleconference call was ended at that point.

Since the landlord did not appear, I explored service of hearing documents and evidence upon the landlord. The tenants testified that they served the landlord with the proceeding package via registered mail sent on July 6, 2019 and that it was successfully delivered on July 10, 2019. The tenants orally provided a registered mail tracking number as proof of service that I have recorded on the cover page of this decision. The tenants also pointed out that the landlord had provided rebuttal evidence.

As for the tenant's evidence, the tenants stated that some documents were sent to the landlord with the registered mail package of July 6, 2019 and other documents were sent to the landlord via email on August 7, 2019.

The tenants confirmed that they continue to occupy the rental unit and seek to continue their tenancy. As such, the primary issue to resolve is whether the 1 Month Notice should be upheld or cancelled. As for the other issues raised on the tenants' application, I severed those issues and dismissed them with leave to reapply as they were not related to the 1 Month Notice and I was uncertain as to which pieces of evidence were properly served and which documents were served via email, which is not an acceptable way to serve evidence. I have severed the other issues pursuant to Rules 2.3 and 6.2 of the Rules of Procedure, which provide:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

## **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

### Issue(s) to be Decided

Should the 1 Month Notice be upheld or cancelled?

### Background and Evidence

A 1 Month Notice to End Tenancy for Cause dated June 17, 2018 was personally served upon the tenants on June 18, 2019. The tenants filed to dispute the 1 Month Notice on June 28, 2019 which is within the time limit for doing so.

The landlord had submitted documentation to the Residential Tenancy Branch in support of ending the tenancy on July 18, 2019 and August 13, 2019. The tenants stated they received evidence from the landlord via email.

Email is not an acceptable method of serving evidence under the Act. Rather, evidence must be served in a manner that is permitted under section 88 of the Act. Also of consideration is that Rule 7.4 of the Rules of Procedure provide:

## **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Considering the landlord did not appear at the hearing to demonstrate he properly served the tenants with his evidence or present his evidence at the hearing, I did not give consideration to the submissions of the landlord.

### Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. This burden is stated in Rule 6.6 of the Rules of Procedure:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

[My emphasis underlined]

In this case, the landlord did not appear to present evidence to prove the tenancy should end for the reason(s) indicated on the Notice to End Tenancy served upon the tenants on June 18, 2019. Therefore, I find the landlord did not meet his burden and I cancel the 1 Month Notice with the effect that this tenancy continues at this time.

#### Conclusion

The 1 Month notice served on June 18, 2019 is cancelled and the tenancy continues at this time.

The other issues raised by the tenants in this application have been dismissed with leave to reapply.

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: August 23, 2019

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Residential Tenancy Branch