



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP - MAX REALTY AND PROPERTY  
MANAGEMENT and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      Tenant: CNC, FFT  
Landlord: OPC, MNDCL-S

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on July 9, 2019 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice for Cause; and
- the return of the filing fee.

The Landlord’s Application for Dispute Resolution was made on August 7, 2019, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for cause;
- a monetary order for damage, compensation or loss; and
- an order granting the recovery of the filing fee.

The Tenant as well as the Landlord’s Agents, W.L., and J.K. attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant stated that he served his Application package to the Landlord by email and could not recall what date the email was sent. The Landlord’s Agents stated that the Tenant’s Application was never received.

### Preliminary Matters

According to the Residential Tenancy Branch Rules of Procedure 3.1 (the “Rules of Procedure”); the applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

Section 89 of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution: An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

I find that the Tenant has not served the Landlord in a manner required by Section 89(1) of the Act. Furthermore, the Landlord's Agents stated that they have not received the Application package or documentary evidence from the Tenant. In light of the above, I dismiss the Tenant's Application with leave to reapply. Leave to reapply does not extend any statutory timelines.

The Landlord's Agents stated that they served the Landlord's Application and documentary evidence to the Tenant by registered mail on August 16, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an 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.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement or the *Act*.

The Landlord's request for a monetary order relating to damage compensation or loss is dismissed with leave to reapply.

#### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on the One Month Notice to End Tenancy for Cause (the "One Month Notice") dated June 20, 2019, pursuant to Section 47, 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2018. Rent in the amount of \$1,750.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$875.00 which the Landlord continues to hold. Currently, the Tenant continues to occupy the rental unit.

The Landlord's Agents testified that they served the Tenant with a One Month Notice on June 21, 2019 with an effective vacancy date of July 31, 2019, by registered mail to the dispute address. The Landlord submitted a copy of the registered mail receipt in support. The Tenant confirmed having received the One Month Notice on July 2, 2019 by email. The Landlord's reason for ending the tenancy on the One Month Notice is;

*“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”*

The Landlord's Agents stated that the One Month Notice was served to the Tenant in relation to several strata bylaw infractions the Tenant has breached, which has resulted in strata fines being levied. The Landlord's Agents stated that the Tenant is required to stay at the parking gate until the gate has closed completely. The Landlord's Agents stated that these infractions have resulted in the Landlord incurring fines in the amount of \$1,200.00 to date. The Landlord provided a list of strata fines in support which indicates there have been six infractions between January 2019 and July 2019.

The Landlord's Agents stated that they have sent the Tenant the strata fines, as well as caution notices regarding the infractions, however, the Tenant has not paid the fines, nor has the Tenant stopped breaching the strata bylaw. The Landlord is seeking to end the tenancy as a result.

In response, the Tenant stated that he has received the One Month Notice, however, is unaware as to which material term he has breached. The Tenant stated that he has not been contacted by the Landlord regarding the strata fines and has not been provided with any caution notices to date. The Tenant stated that at times he has not waited for the parking garage gate to close completely; however, he was unaware that his actions were incurring fines or could lead to the end of his tenancy.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on June 20, 2019 with an effective vacancy date of July 31, 2019, by registered mail to the dispute address. The Landlord provided a copy of the registered mail receipt

to confirm that they mailing took place. The Tenant confirmed having received the notice on July 2, 2019 by email. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

While the Tenant's Application to cancel the One Month Notice was dismissed due to improper service of the Application package, I find that the Tenant is not entitled to the return of the filing fee.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

In this case, I accept that the Landlord's reason to end the tenancy is based on the fact that the Tenant breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

According to the Residential Tenancy Policy Guideline 8;

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

During the hearing, the Landlord's Agents stated that the Tenant had been cautioned about the strata bylaw violations and that a copy of the strata fines was sent to the Tenant. The Tenant stated that he has never received any caution notices from the Landlord and was unaware what the grounds relating to the One Month Notice.

I find that the Landlord provided insufficient evidence to demonstrate that the Landlord inform the Tenant in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the documents containing the information regarding the strata fines submitted into evidence by the Landlord is not addressed to the Tenant, nor does it list the dispute address. As such, I find that based on the evidence and testimony provided during the hearing, that it is more likely than not that the Tenant was not provided with written notice that a material term of the tenancy agreement was being breached which could result in the tenancy ending.

In light of the above, I cancel the One Month Notice, dated June 20, 2019. I order that the tenancy will continue until ended in accordance with the Act.

As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

### Conclusion

The Tenant's application is dismissed. The One Month Notice issued by the Landlord dated June 20, 2019 is cancelled. The tenancy will continue until 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: September 10, 2019

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Residential Tenancy Branch