



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

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

- cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's notice of dispute resolution proceeding package sent by Canada Post registered mail on July 20, 2019, which was in accordance with the requirements of sections 59(3) and 89 of the *Act*, and the Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (Rules). The tenant confirmed that he did not submit any evidence other than a copy of the One Month Notice. The landlord testified that he served the tenant with his evidence, consisting of approximately 18 pages, on September 16, 2019 by leaving it in the tenant's residence during an inspection of the rental unit. At the beginning of the hearing, the tenant testified that he received the documents and had reviewed them, however, during the hearing, the tenant changed his testimony and claimed that he had not had sufficient time to review the documents or obtain his own evidence to dispute the claims made in the landlord's evidence.

I have referred to the following Rules in determining that the landlord's evidence does not meet the requirements for consideration in this hearing as it would be unfairly prejudicial to the tenant:

### 3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible.

If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

### 3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

### 3.16 Respondent's proof of service

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

## Preliminary Issue - Procedural Matters

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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the form and content requirements of section 52 of the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the notice?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into documentary evidence. The parties were unable to agree whether this tenancy started in 2013 or 2014, but confirmed that it started as a one-year fixed term which then converted to a month-to-month tenancy. Current monthly rent of \$1,705.00 is payable on the first day of the month. The tenant paid a security deposit of \$750.00 at the beginning of the tenancy, which continues to be held by the landlord.

The tenant confirmed that the landlord personally served him with the One Month Notice dated July 6, 2018 on that day.

The tenant submitted a copy of the landlord's One Month Notice into evidence, which stated an effective move-out date of August 31, 2018, with the following box checked off as the reason for seeking an end to this tenancy:

*Tenant is repeatedly late paying rent.*

I note that the landlord has not provided any of the particulars or details regarding this reason to end tenancy, such as the dates for which rent was paid late, in the "Details of Cause" section provided on the form.

I also note that the only evidence submitted by the landlord in this matter, setting out the dates of the claimed late rent payments was not provided to the tenant until the day before the hearing, September 16, 2019.

The landlord claimed that the tenant paid rent late for the months of May, June and July 2019. The tenant acknowledged that he was late paying rent in March 2016 and again in June and July 2019 but disputed the month of May 2019.

### Analysis

Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent requires a minimum of three late payments of rent within a confined period of time, however, the late payments do not have to be consecutive.

Section 47 of the *Act* allows a landlord to issue a One Month Notice to End Tenancy for Cause on the grounds of repeated late payment of rent. Section 47 provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was in receipt of the landlord's One Month Notice on July 6, 2019. The tenant filed an application to dispute the notice on July 15, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

In the case before me, the landlord had no documentary evidence to rely on in this matter as he failed to serve his evidence in accordance with the Rules of Procedure and therefore the evidence has not been considered in this matter.

Further to this, the approved form for a One Month Notice to End Tenancy for Cause includes a section on page two entitled "Details of Cause", which provides the following explanation regarding the required details to be provided:

*Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).*

The landlord issuing the One Month Notice is required to provide the details pertaining to the reasons for ending the tenancy, to ensure that the tenant is clearly aware of the case being made against them, so that the tenant has a full and fair opportunity to prepare their evidence in order to dispute those claims, should they wish to.

In this matter, the landlord failed to provide any particulars regarding the “details of cause” for issuing the notice, on or attached to the notice.

Further to this, the landlord did not serve the tenant with his evidence regarding the dates for which he has claimed receipt of late payment of rent. The tenant claimed in the hearing that he was unable to fully respond to the allegations made by the landlord in the landlord’s evidence due to receiving the landlord’s evidence so late.

As such, I find that the landlord’s failure to complete the One Month Notice in the approved form, which requires the provision of the “Details of Cause” has resulted in the landlord failing to adequately provide the “grounds for ending the tenancy” as required by section 52 (d) of the *Act*. Further to this, as explained above, the landlord failed to date the notice correctly as required by section 52 (a) of the *Act*.

For these reasons, I find that the tenant was unfairly prejudiced in his ability to respond to the landlord’s One Month Notice.

Therefore, based on the testimony presented to me, on a balance of probabilities, I find that the landlord’s One Month Notice dated July 6, 2019 failed to meet the form and content requirements of section 52 of the *Act*. I order that the One Month Notice is cancelled and of no force or effect.

Therefore, the tenant’s application is successful and the landlord’s One Month Notice is cancelled and of no force or effect.

The tenancy will continue until ended in accordance with the *Act*.

### Conclusion

The tenant was successful in his application to dispute the landlord’s notice to end the tenancy. I order that the One Month Notice to End Tenancy for Cause dated July 6, 2019 is cancelled and this tenancy shall continue 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: September 19, 2019

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Residential Tenancy Branch