



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOYAL HOLDINGS CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC (Tenant)  
                             FFL, OPC (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed her application August 09, 2019 (the "Tenant's Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause (the "Notice").

The Landlord filed the application August 13, 2019 (the "Landlord's Application"). The Landlord sought an Order of Possession based on the Notice and reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord's Application.

The Agent testified that the hearing package and evidence were sent by registered mail to the rental unit August 22, 2019. The Landlord submitted the customer receipt for this with Tracking Number 1 on it. I looked this up on the Canada Post website which shows the Tenant signed for the package August 23, 2019.

Based on the undisputed testimony of the Agent, customer receipt and Canada Post website information, I find the Tenant was served with the hearing package and evidence for the Landlord's Application in accordance with sections 59(3), 88(c) and

89(2)(b) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I find the Tenant received the hearing package and evidence August 23, 2019, well before the hearing.

I also note that the Tenant would have been aware of the hearing as the Tenant’s Application was scheduled for the same date and time.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant.

I have not considered the evidence submitted by the Tenant as she did not attend the hearing and present the evidence as required by rule 7.4 of the Rules of Procedure (the “Rules”).

Rule 7.3 of the Rules states that an arbitrator can dismiss an Application for Dispute Resolution without leave to re-apply if a party fails to attend the hearing.

Given the Tenant did not appear at the hearing, I have no evidence before me as to the basis for the Tenant’s Application. In the absence of evidence from the Tenant, the Tenant’s Application is dismissed without leave to re-apply.

The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the Landlord’s documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2018 and is a month-to-month tenancy. Rent is \$1,250.00. The Agent testified that rent is due by the first day of each month. The agreement is signed by the Tenant and for the Landlord.

The Notice was submitted as evidence. Near the bottom of the Notice there is a space for the Landlord or Agent signature, a box for the Landlord or Agent name and a box for the date the Notice was signed by the Landlord or Agent. The “date signed” box is blank. The grounds for the Notice are a breach of a material term of the tenancy agreement.

The Agent testified that he posted both pages of the Notice to the door of the rental unit July 31, 2019. The Landlord submitted a Proof of Service signed by a witness confirming this.

The Agent testified that the Notice was issued because the Tenant has a cat in the rental unit despite the tenancy agreement stating that pets are not allowed.

I asked the Agent why the note in the tenancy agreement that pets are not allowed is a material term. He said because it is a term of the tenancy agreement. He said he just checked the ground in the Notice because he could not find a different one that applied and it was the only one he could choose.

### Analysis

The Notice was issued pursuant to section 47 of the *Act*. Section 47(3) of the *Act* states that a notice issued under section 47 must comply with section 52 of the *Act*.

Section 52 of the *Act* states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...
  - (e) when given by a landlord, be in the approved form.

The Notice does not include the “date signed” which I find is required by section 52(a) of the *Act*. Given this, I find the Notice does not comply with section 52 of the *Act* as required by section 47(3) of the *Act*. Therefore, I find the Notice is not an effective notice and decline to issue an Order of Possession based on it.

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

Given the Landlord was not successful, I decline to award the Landlord reimbursement for the filing fee.

### Conclusion

The Notice does not comply with section 52 of the *Act*. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

I decline to award the Landlord reimbursement for the filing fee.

Both the Tenant’s Application and Landlord’s Application are dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 11, 2019

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Residential Tenancy Branch