



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rockwell Management Inc.  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated January 6, 2020 ("One Month Notice"), and to recover the cost of her filing fee.

The Tenant and an agent for the Tenant, V.H. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenant and the Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, were the Tenant and the Agent.

I explained the hearing process to the Tenant and Agent and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to my questions. 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.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents and her evidentiary submissions by Canada Post registered mail, sent on January 10, 2020. The Tenant provided a Canada Post tracking number as evidence of service. I find that the

Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the documents provided, as well as confirming her email address in the hearing. The Tenant confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Should the One Month Notice be Cancelled or Confirmed?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Tenant advised that the periodic tenancy began on August 1, 2006, with a current monthly rent of \$921.00, due on the first day of each month. The Tenant said that she paid the Landlord a security deposit of \$300.00, and no pet damage deposit.

The Tenant submitted a copy of the One Month Notice, which states that the Landlord served a One Month Notice on the Tenant on January 6, 2020, by posting it on the door of the rental unit with an effective vacancy date of February 7, 2020, corrected to February 29, 2020, pursuant to section 53 of the Act. The grounds checked off for issuing the One Month Notice were because:

- the Tenant or a person permitted on the property by the Tenant has
  - caused extraordinary damage to the unit or property; and
- the Tenant breached a material term of the tenancy agreement without correcting it within a reasonable time after receiving written notice to do so.

### Analysis

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

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time

unless otherwise set by the arbitrator. The Applicant Tenant and the Agent and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 11:00 a.m. on March 5, 2020, as scheduled.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply. The teleconference line remained open for 17 minutes, however, neither the Respondent nor an agent acting on their behalf attended to provide any evidence or testimony for my consideration.

### **Rule 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. In this case, the burden of proof is on the Landlord to demonstrate the validity of the One Month Notice.

When I consider all the evidence before me overall, I find that the Landlord has not sufficient evidence to meet their burden of proof to support the validity of the One Month Notice. I, therefore, cancel the One Month Notice and find that it is void and of no force or effect.

Given that the Tenant is successful in this Application, I award her recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act. The Tenant is authorized to deduct \$100.00 from one upcoming rental payment in satisfaction of this award.

### **Conclusion**

The Tenant is successful in her Application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect. The Tenant is awarded recovery of the \$100.00 Application filing fee, and is authorized to deduct \$100.00 from one future rent payment in satisfaction of this award.

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: March 05, 2020

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Residential Tenancy Branch