



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNE, MT

### Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- an order cancelling a One Month Notice to End Tenancy for end of employment (One Month Notice); and
- an order extending the time to file an application disputing the Notices issued by the landlord.

The listed tenant attended the hearing; however, the landlords did not attend.

The tenant stated he served the landlords with their application for dispute resolution and Notice of Hearing by email attachment as allowed by the Director's Order, dated March 30, 2020.

In part, the Director's Order allows service of documents under section 89 of the Act until the declaration of the state of emergency made on March 18, 2020 is cancelled or expires without being extended. In part, the Director's Order states that one way a document may be served on the other party is:

*the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed.*

I have reviewed the tenant's evidence and find it meets the criteria for service under the Director's Order, as it was emailed to the email address of the landlord, YQ, regularly used for communication through the tenancy.

I therefore accept that landlord, YQ, was sufficiently served and the hearing proceeded in the landlord's absence.

As the landlord, YH, was not served at her individual email, I have excluded her from further consideration in this matter.

The tenant was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the tenant and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

Although the tenant applied for an order cancelling a One Month Notice to End Tenancy for end of employment, the One Month Notice the tenant submitted into evidence was actually a One Month Notice to End Tenancy for Cause.

I have therefore amended the tenants' application so that they are now seeking cancellation of a One Month Notice to End Tenancy for Cause.

#### Issue(s) to be Decided

Is the tenant entitled to an order extending the time to file an application disputing the Notice issued by the landlord?

If so, is the tenant entitled to have the Notice and the 1 Month Notice cancelled?

### Background and Evidence

The tenant submitted that this tenancy began in December 2015, monthly rent began at \$1,400 and is currently \$1,517. The rental unit is the basement suite of a home owned and occupied in the upper level by the landlords.

The tenant submitted that he has continuously been in another country since December 2019, and therefore has not returned to the rental unit. The tenant submitted that he informed the landlords of their intention to be in another country for an extended period of time.

The tenant submitted that he paid the landlords for the monthly rent for January and February 2020, in cash, prior to leaving, and by way of a cheque for the monthly rent of March and April 2020.

The tenant submitted that the 10 Day Notice and the One Month Notice were taped to his rental unit door and he did not know that they were there until a friend, who is also a neighbour, noticed them, took a photo, and sent them to the tenant.

The tenant submitted that he filed this application after receiving the photos from the neighbour. These photos were submitted into evidence by the tenant.

The tenant submitted that the landlord informed him the rent cheque for March 2020 was returned; however, the tenant submitted that he contacted the landlords and said the funds were in his account.

The tenant submitted that the landlord has refused to cash the rent cheques for March and April 2020.

### Analysis

Section 66(1) of the Act authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy only in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated time lines is very strong and compelling.

In this case, I find the tenant submitted sufficient evidence that the landlord was aware that the tenants were away for an extended period of time and were not in a position to be served the Notices by attaching them to the door.

I find the undisputed evidence is that the tenant made an application within the proper time frame when he was made aware the Notices were posted on the door.

I find it reasonable under the circumstances to grant the tenants an order extending the time to file an application disputing the Notices issued by the landlord.

#### *Cancellation of the Notices -*

When a landlord issues a notice to end a tenancy and the tenant files an application to dispute the notice, the landlord must prove they have grounds to end this tenancy and must provide sufficient evidence to prove the reason or causes alleged on their Notice.

In the absence of the landlord or any evidence from the landlord to support the reasons and grounds listed in the 10 Day Notice and the One Month Notice, I find that they must be set aside.

I therefore order that the 10 Day Notice and the One Month Notice, both dated March 25, 2020, be cancelled, with the effect that the tenancy continues until it may otherwise legally end under the Act.

#### Conclusion

The 10 Day Notice and the One Month Notice which are the subject of this dispute resolution are hereby cancelled, of no force or effect, and the tenancy continues until it may otherwise end under 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: June 9, 2020

---

Residential Tenancy Branch