



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLLYBURN PROPERTIES  
LIMITED and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated July 31, 2020 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent ("landlord") attended the hearing by way of conference call, the applicant tenant did not, although I waited until 9:41 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into this teleconference.

The landlord confirmed that she is the property manager for the landlord company named in this application and that she had permission to speak on its behalf.

The landlord stated that she received a copy of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that the tenant was served with the landlord's written evidence package on September 2, 2020, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's evidence package on September 5, 2020, three days after its posting.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

*7.3 Consequences of not attending the hearing: 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 re-apply.*

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

During the hearing, I informed the landlord that pursuant to section 55 of the *Act*, if I dismissed the tenant's application to cancel a 10 Day Notice, the landlord was entitled to an order of possession if the notice met the requirements of section 52 of the *Act*.

The landlord initially stated that she did not require an order of possession because the tenant gave notice to move out at the end of September 2020. She then said that she wanted an order of possession. When I asked the landlord how and when the 1 Month Notice was served to the tenant, she did not know. She initially claimed that it was served to the tenant on September 2, 2020, even though the effective move out date on the notice was August 31, 2020. She explained that the effective move out date should have been September 30, 2020 because that is when the tenant gave notice to move out, he did not leave by August 31, 2020, and the landlord wanted to "honour" this hearing date of September 14, 2020. The landlord then maintained that she did not have the paperwork in front of her during the hearing because the original landlord manager had a heart attack. She read off the tenant's application paperwork, attempting to guess the service date.

For the above reasons, I do not issue an order of possession to the landlord. The landlord did not know the correct service date for the 1 Month Notice. The landlord also verbally changed the effective date on the notice, even though it was not automatically corrected as per section 53 of the *Act*. Therefore, I cannot confirm that the 1 Month notice meets the requirements of section 52 of the *Act*. I informed the landlord of my decision during the hearing. She confirmed her understanding of same.

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 14, 2020

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Residential Tenancy Branch