



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cowichan Lake Senior Citizens  
Housing and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On October 22, 2020 the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking to cancel a One Month Notice to End Tenancy dated October 15, 2020 ("the One Month Notice").

The Tenant, the Tenant's representative D.A., and the Landlord's Agents J.P., S.S., and R.L. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

### Preliminary Matters

At the start of the hearing, the Tenant stated there had been a previous hearing on August 31, 2020 in which the Tenant had applied to cancel a One Month Notice dated July 18, 2020. The Tenant provided a copy of the August 31, 2020 decision in his documentary evidence. The Tenant stated that the Landlord did not attend the previous hearing on August 31, 2020 to enforce the One Month Notice, therefore, the Tenant was successful in his Application to cancel the One Month Notice dated July 18, 2020.

The Tenant stated that the Landlord has reserved a new One Month Notice dated October 15, 2020 for the same reasons that the Landlord was seeking to end the tenancy with the July 18, 2020 One Month Notice, which has already been decided on. As such, the Tenant stated that the One Month Notice dated October 15, 2020 should also be set aside as the matter cannot be re-heard.

The Landlord's Agents stated that they did not attend the previous hearing as they were never served with the Notice of Hearing in relation to the hearing that took place on August 31, 2020. The Landlord's Agents stated that they had provided their documentary evidence to the Residential Tenancy Branch in preparation for the August 31, 2020 hearing, however, were not aware and were not notified that they were required to attend the hearing.

The Landlord's Agents confirmed that they received the August 31, 2020 decision and that they did not apply for a Review Consideration on the basis that they were unable to attend the hearing on August 31, 2020. The Landlord's Agents confirmed that they have re-served a new One Month Notice dated October 15, 2020 to the Tenant for the exact same reasons which were noted on the previous One Month Notice dated July 18, 2020.

I find that the Decision, dated August 31, 2020 dealt with a One Month Notice, relating to the exact same parties, and dispute address as today's hearing for the Tenant's Application to dispute another One Month Notice. I find that the reasons to end tenancy listed by the Landlord on the One Month Notice dated October 15, 2020 are identical to the reasons noted in the previous One Month Notice dated July 18, 2020, which has already been decided on.

I find that in the original decision, dated August 31, 2020 the Arbitrator was satisfied based on the Tenant's oral testimony and documentary evidence provided that the Landlord was sufficiently served with the Notice of Hearing and the Tenant's documentary evidence in accordance with the Act. The Arbitrator was further satisfied that the Landlord had been served based on the fact that the Landlord, in their own documentary evidence, confirmed that they received the Notice of Dispute by registered mail on July 31, 2020. Lastly, I find that the Landlord had the opportunity to submit an Application for Review Consideration after receiving the August 31, 2020 decision, if they were unable to attend the original hearing.

In light of the above, I find that the Landlord had an opportunity to pursue an order of possession in relation to the One Month Notice dated July 18, 2020 however, the Landlord failed to attend the hearing on August 31, 2020, resulting in the One Month Notice dated July 18, 2020 being cancelled. As the merits of the previous One Month Notice are identical to the current One Month Notice dated October 15, 2020 and that this has already been determined in the August 31, 2020 decision, I find that today's matter is *res judicata*. In other words, the legal issue was resolved in a previous

decision and I have no authority to alter that decision. I therefore deny reconsideration of this matter during this hearing.

In light of the above, I find that the Tenant was successful with their Application and I therefore cancel the One Month Notice dated October 15, 2020. The tenancy will continue until legally ended in accordance with the Act. As the Tenant was successful with their Application, I find that the Tenant is entitled to recover the filing fee from the Landlord and I order the Tenant to deduct \$100.00 from one (1) future rent payment.

### Conclusion

I apply *res judicata* to preserve the effect of the first Decision, dated August 31, 2020. As such, the Tenant's Application is successful. The One Month Notice dated October 15, 2020 is cancelled. The Tenant is entitled to deduct \$100.00 from one (1) future rent payment. The tenancy will continue until legally 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: December 11, 2020

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Residential Tenancy Branch