



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nest Property Management and Real Estate and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNC, OLC, RR, LRE, MNRT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 27 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called

into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claims are not related to whether the tenancy continues. Therefore, all the tenant's claims except for her applications to dispute the landlord's One Month Notice are dismissed, and I grant the tenant liberty to reapply.

The tenant provided affirmed testimony that they personally served the landlord with the Notice of Hearing and Application for Dispute Resolution on September 31, 2020.

I accept the uncontradicted affirmed testimony of the tenant and find the tenant served the landlord with the documents as required by section 89 of the Act.

#### *Preliminary Issue*

I explained to the tenant that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's One Month Notice, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the Notice to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and the *Act*.

Conclusion

I order that the tenant's application to cancel the One Month Notice to End Tenancy is granted. I order that the tenancy shall continue until ended in accordance with the agreement and 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