



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE, CNC-MT, LRE, OLC

The tenant filed an Application for Dispute Resolution (the “Application”) on August 10, 2020 seeking an order to cancel the One Month Notice to End Tenancy for end of employment.

On August 17, 2020 the tenant amended their Application to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). On this ground, they applied for more time to dispute the One-Month Notice.

On September 3, 2020 the tenant amended their Application to add two issues: an Order that the landlord comply with the legislation and/or tenancy agreement; and an Order that suspends or sets conditions on the landlord’s right to enter the rental unit.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on September 17, 2020, reconvening on December 10, 2020. In the conference call hearing I explained the process and offered the attending parties the opportunity to ask questions.

At the outset of the September 17, 2020 hearing the landlord stated that they received the tenant’s notice of dispute resolution, and the prepared evidence, delivered by registered mail. The tenant also confirmed their receipt of the landlord’s prepared evidence in advance of the hearing.

After the initial hearing, the matter was adjourned as per my interim decision on September 30, 2020. This allowed the tenant a proper amount of time to make their oral submissions on their request for more time to make their Application to cancel the One-Month Notice. Separately, this was to hear details on service of the document by the landlord, and the timeline in which the tenant filed their Application. The matter reconvened on December 10, 2020 to hearing the tenant’s submissions on that issue.

### Preliminary Matters

At the outset of the September 17 hearing the tenant acknowledged that their initial Application to cancel a notice for “end of employment” was incorrect. This is not the Notice in question that is the subject of this hearing. For this reason, I sever this ground on their Application, as per Rule 2.3 of the Residential Tenancy Branch Rules of Procedure.

In their amendment to the Application on September 3, the tenant added two separate grounds concerning the landlord entering the unit, and compliance with the legislation and/or tenancy agreement. More specifically, this concerns the landlord notifying the tenant of imminent repairs to the unit and, invoicing the tenant for extra repairs.

I find these issues are not related to the core issue of the end of tenancy and the reasons for the landlord issuing the One-Month Notice. By Rules 2.3 and 6.2, I dismiss these unrelated claims of the tenant, with leave to re-apply.

On the One-Month Notice, disputed by the tenant here, the landlord indicated they issued it on July 20, 2020. This gave the final move-out date of September 1, 2020. On page 2 of the document, the landlord indicated that they served it “In person to the tenant or agent of the tenant or with an adult (over 19) who apparently lives with the tenant.”

Page 2 also contains the guideline: “Landlords should also complete Proof of Service Notice to End Tenancy (form #RTB-34) as evidence of service.”

The landlord indicated the following reasons for issuing the One-Month Notice:

- ☐ Tenant or a person permitted on the property by the tenant has:
  - put the landlord's property at significant risk
- ☐ Tenant has not done required repairs. . .
- ☐ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided details on page 3 with reference to the tenancy agreement clauses for yard maintenance and tenant responsibilities.

The tenant applied for more time to apply for cancellation of this One-Month Notice. On their amendment to the Application dated August 17, 2020, the tenant stated: "I want to apply for extension to cancel [One-Month Notice] due to extraordinary circumstances. I was not able to respond within designated time."

In a separate document dated August 9, 2020, the tenant made the following points:

- they received the One-Month Notice included in the evidence package submitted by the landlord "in response to the claim I have filed with the RTB";
- the document was not presented in person as was indicated on page 2 of the form;
- they "did not receive a properly served written notice in regard to the said breach of material terms until August 6, 2020".

In the reconvened hearing on December 10, 2020, the tenant spoke to this issue. They were neither served in person, nor did the One-Month Notice appear in their mailbox. The first time they saw the document was in the landlord's evidence package in a prior hearing they had with the landlord, on a separate monetary issue.

As proof of this, the tenant pointed to the copy in the landlord's evidence package for this current hearing, to show two separate page numbers handwritten by the landlord on the document itself. One written page number does not match the sequence in which it appears in this hearing's evidence package; therefore, this proves the document formed part of the separate hearing's evidence package. This was the first time the tenant discovered the document. They queried the Arbitrator in the prior hearing about this and the Arbitrator provided cursory direction that the tenant needs to apply separately to contest the One-Month Notice.

Because the One-Month Notice received scant mention in the separate hearing, and no mention in the arbitrator's final decision, the tenant made the conclusion that the One-Month Notice was not being pursued by the landlord. This was also because the tenant had not previously seen any written official notice from the landlord of a breach of a material term.

Upon then receiving a separate written notice (labeled as the "second notification") of a breach of a material term of the tenancy agreement from the landlord on August 6, left at the door of their unit, the tenant concluded that the landlord was still seeking to end the tenancy. At this point, the tenant made their Application on August 10 to cancel the One-Month Notice.

The landlord responded by providing that they issued the document on July 20 and put this in the tenant's mailbox – this means it was deemed served on July 23, 2020. They maintained that the tenant does “not have a clear recollection.” The landlord also stated the tenant did not raise the issue of not receiving the document in any manner in the prior separate hearing. According to the landlord, the tenant in fact stated they were served with the One-Month Notice.

On my review of the timeline and the documents in place, as well as both parties' submissions, I find the tenant was not properly served the One-Month Notice in line with section 88 of the *Act*. I make this finding for the following reasons:

- The landlord indicated, on the document, that they left it “In person to the tenant”; however, the landlord in the hearing stated it was put in the tenant's mailbox, thereby being deemed served on July 23, 2020. I find the landlord gave the wrong indication on page 2 of the document itself. There is a separate space to indicate that the document was left in a mailbox or mail slot.
- I find the tenant's account credible that they discovered the document itself in the separate hearing's evidence package. The dual numbering system handwritten on the document lends credence to the tenant's account.
- The landlord did not complete or submit a ‘Proof of Service’ to show completed service in line with a method set out in section 88 of the *Act*. This document would assist in establishing the landlord's version of events. I make this consideration when weighing the landlord's evidence here against the statements of the tenant, who is showing the document itself appeared in the separate hearing evidence package. This also highlights the discrepancy in the landlord's account in the hearing versus what appears on page 2 of the document regarding service.
- I find it plausible that the tenant did not make the Application initially after the unrelated hearing because they had the belief that the landlord was not pursuing the eviction. The One-Month Notice was not discussed in the hearing itself and received no mention in the final decision. I find it follows logically that the tenant then realized the eviction was still a live issue when they received a written formal notice of a breach of a material term. Finding this completed the circle in the tenant's mind back to the ground indicated on the One-Month Notice by the landlord.

I find the tenant found the copy of the One-Month Notice in a separate evidence package; therefore, I conclude the landlord did not serve the document in a manner set forth in section 88 of the *Act*. I accept the tenant's version that they did not receive the document in person – the landlord in the present hearing said it was in the mailbox. The tenant only discovered it in a separate evidence package; therefore, it was not served in their mailbox.

For these reasons, the One-Month Notice is cancelled and is of no force and effect. The tenancy will continue.

### Conclusion

For the reasons above, I order the One Month Notice that is the subject of this hearing is cancelled, and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 23, 2020

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Residential Tenancy Branch