



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT

### Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served with this application for dispute resolution via registered mail on October 19, 2020. A Canada Post receipt stating same was entered into evidence. I find that the landlord was served in accordance with section 89 of the *Act*. I find that the landlord was deemed served with the tenant's application for dispute resolution on October 24, 2020, five days after its mailing, in accordance with section 90 of the *Act*.

### Preliminary Issue- Severence

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice to End Tenancy for Cause (the “One Month Notice”) and the continuation of this tenancy is not sufficiently related to the tenant’s other claim to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the One Month Notice.

The tenant’s other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss the tenant’s claim for a monetary order for damage and compensation under the *Act*, with leave to reapply.

### Issue to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?

### Background and Evidence

The tenant testified that the landlord personally served her with a One Month Notice dated September 28, 2020 on September 30, 2020. The tenant entered into evidence the first page of the One Month Notice but not the second or third page. The One Month Notice has an effective date of October 31, 2020. The first page of the One Month Notice is not signed by the landlord and does not contain the address at which the landlord is requesting the tenant to vacate.

The tenant testified that page two of the One Month Notices states the following reasons to end the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I find that the landlord did not prove on a balance of probabilities, the reason the landlord wished to end this tenancy as the landlord did not provide any testimony or evidence. I therefore cancel the One Month Notice and find that this tenancy will continue in accordance with the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and  
(e)when given by a landlord, be in the approved form.

I find that while the tenant did not upload the entire One Month Notice, I am still able to determine that the One Month Notice is invalid because it was not signed by the landlord, contrary to section 52(a) of the *Act*. On this ground, I also find that the One Month Notice is invalid and that this tenancy will continue in accordance with the *Act*.

### Conclusion

The tenant's claim for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*, is dismissed with leave to reapply.

The One Month Notice is cancelled. This tenancy will continue 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: January 04, 2021

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Residential Tenancy Branch