



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 03, 2020 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause.

The Tenant attended the hearing with J.H. and J.U. Nobody attended the hearing for the Landlord. I explained the hearing process to the parties. The Tenant and J.H. provided affirmed testimony.

There was a discussion at the outset about the legal address of the rental unit given how it was entered on the Application and because the parties did not agree about the legal address. The parties settled on the address noted on the front page of this decision.

The Tenant submitted one page indicating the Landlord's full name as evidence for the hearing. The Landlord did not submit evidence for the hearing. I addressed service of the hearing package.

The Tenant and J.H. testified as follows. The Landlord owns the rental unit building. The rental unit is a room. The Tenant shares a washroom with other tenants. They do not believe that the Landlord lives in the rental unit building.

J.H. testified that the hearing package was sent to the Landlord by registered mail on November 04, 2020. J.H. testified that the package was sent to the rental unit address and that the Landlord has an office in the building. J.H. provided Tracking Number 1. I looked this up on the Canada Post website which shows notice cards were left November 06, 2020 and November 16, 2020 and the package was unclaimed.

Based on the undisputed testimony of J.H. and Canada Post website information, I am satisfied the Landlord was served with the hearing package in accordance with section 89(1)(c) of the *Residential Tenancy Act* (the “Act”). I am also satisfied the Tenant complied with rule 3.1 of the Rules of Procedure (the “Rules”) in relation to the timing of service. The Landlord cannot avoid service by failing to pick registered mail packages up. The Landlord is deemed to have received the package November 09, 2020 pursuant to section 90(a) of the *Act*.

As I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Landlord.

### Issue to be Decided

1. Should the One Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

The Tenant and J.H. testified as follows.

There is no written tenancy agreement in this matter. There is a verbal tenancy agreement between the parties. The tenancy started three years ago and is a month-to-month tenancy. Rent is \$500.00 per month. The Tenant believes a \$250.00 security deposit was paid.

The Landlord did not give the Tenant a One Month Notice to End Tenancy for Cause on the RTB form. The Landlord verbally told the Tenant to move out.

### Analysis

I am satisfied based on the undisputed testimony of the Tenant and J.H. that there is a tenancy agreement covered by the *Act* between the parties.

The tenancy can only be ended in accordance with section 44 of the *Act* which states:

#### **44 (1) A tenancy ends only if one or more of the following applies:**

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
  - (i.1) section 45.1 [tenant's notice: family violence or long-term care];
  - (ii) section 46 [landlord's notice: non-payment of rent];
  - (iii) section 47 [landlord's notice: cause];
  - (iv) section 48 [landlord's notice: end of employment];
  - (v) section 49 [landlord's notice: landlord's use of property];
  - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
  - (vii) section 50 [tenant may end tenancy early];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement...

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

(emphasis added)

Further, section 52 of the *Act* states:

**52 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.**

(emphasis added)

The Landlord cannot end this tenancy verbally. The Landlord must comply with section 44 of the *Act*. The Tenant is not obligated to vacate the rental unit based on the Landlord verbally telling the Tenant to do so. The Tenant is not obligated to vacate the rental unit unless the Landlord complies with section 44 of the *Act*.

I also note that, if the Landlord had issued a One Month Notice to End Tenancy for Cause on the RTB form, the Landlord would have had the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The Landlord would not have done so given the Landlord did not attend the hearing to provide evidence on the grounds for the Notice.

Conclusion

The Tenant was not issued a One Month Notice to End Tenancy for Cause on the RTB form and therefore there is no Notice to dispute, uphold or cancel. However, the Landlord must comply with section 44 of the *Act*. Further, the Tenant is not obligated to

move out of the rental unit unless the tenancy is ended in accordance with section 44 of 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 *Act*.

Dated: January 21, 2021

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Residential Tenancy Branch