



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, MNDCT, OLC**

### **Introduction**

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

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

The applicant/tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged being served with the tenants' Application for Dispute Resolution Proceedings Package, however did not acknowledge being served with the tenant's amendment filed on March 18, 2021 seeking an order for the landlord to comply and a monetary order for a return of the security deposit.

### **Background and Evidence**

The landlord testified the tenant vacated the rental unit on February 28, 2021 and that she returned the tenant's full security deposit on March 4, 2021. The security deposit was sent to the tenant's forwarding address in Ontario. The landlord acknowledges the forwarding address was given to her by the tenant on February 11, 2021.

### Analysis

The tenant filed an application for dispute resolution seeking to cancel the landlord's Notice to End Tenancy on January 6, 2021. The tenant did not attend the hearing of this application. The landlord, who was in attendance, testified that the tenant had moved out of the rental unit as of February 28, 2021. Based on this evidence from the landlord, I find that the tenant accepted the validity of the Notice to End Tenancy or otherwise agreed to terminate the tenancy and, the tenant's application seeking to cancel the Notice to End Tenancy is dismissed on this basis. As such, it is not necessary for me to determine on the merits whether the Notice to End tenancy was valid and I make no findings with respect to its validity. As the tenant has already moved out of the rental unit, it is not necessary for an order of possession to be granted.

Rule 4.6 of the Residential Tenancy Branch Rules of Procedure state that a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing. Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply, and rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

First, there is no evidence before me indicating the tenant served the landlord with the amendment seeking an order for the landlord to comply or for the monetary order for a return of the security deposit. Second, the landlord provided undisputed testimony that the security deposit was returned to the tenant. Third, the tenant did not attend this hearing to present the merits of his claim for me to consider.

As there is no evidence to the contrary, and for the three reasons stated above, I dismiss the remainder of the tenant's application without leave to reapply.

### Conclusion

The tenant has vacated the property and I treat this as the tenant's acceptance of the validity of the landlord's notice to end tenancy. As such, I make an order under section 44(1)(f) that the tenancy ended on February 28, 2021 when the tenant vacated the rental unit.

The remainder of the tenant's application is dismissed without leave to reapply.

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: April 01, 2021

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Residential Tenancy Branch