



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed on January 25, 2021, under the Residential Tenancy Act (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on January 12, 2021.

Only the landlord appeared and was affirmed at the hearing. The tenant did not appear to give evidence, although this hearing was scheduled by their application. The tenant on April 17, 2021, received by the Residential Tenancy Branch a notification reminder with the following information.

This is a reminder that you have an upcoming dispute resolution proceeding for File Number **[removed]**

Hearing date: April 20 2021

Hearing time: 09:30 AM

Instructions for the proceeding were provided in the Notice of Dispute Resolution Proceeding. If you do not attend this hearing, you will lose the opportunity to provide information that could impact the result. The proceeding will continue even if one party does not attend.

[Reproduced as written.]

As the tenant did not appear by 9:45 am, the hearing proceeded.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on June 1, 2017. Rent in the amount of \$1,015.00 was payable on the first of each month. The tenant paid a security deposit of \$475.00.

The Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on February 28, 2021. A copy of the Notice was submitted in evidence by the tenant for my review and consideration.

The first issue I must determine is whether the tenant made their application on time.

The landlord testified that they served the tenant with the Notice on January 12, 2021, by posting to the door and it was received by the tenant on that date as the tenant was seen removing the Notice from the door at 8:45 pm, which was also video recorded.

The landlord stated that the tenant did not dispute the Notice within the statutory limit, and they are entitled to an order of possession. The landlord stated that they have accepted occupancy rent for April 2021 and are satisfied that the order of possession be effective on April 30, 2021.

The tenant's written submission in their application state that they received the Notice on January 12, 2021.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the Notice, filed in evidence by the tenant. I find the Notice complies with section 52 of the Act, form, and content.

The evidence of the landlord was the tenant was seen removing the Notice from the door on January 12, 2021 and this is the date the tenant acknowledged it was received in their application for dispute resolution. I find the deemed service provisions of the Act, of the three days, do not apply to this matter as the evidence to the contrary clearly supports the Notice was received by the tenant on January 12, 2021. I find the tenant was served with the Notice on January 12, 2021.

Under section 47(4) of the Act the tenant had the right to dispute the Notice within 10 days after it was received. I find the last day the tenant had to make their application for dispute resolution was on Friday, January 22, 2021. The tenant did not file their application until Monday, January 25, 2021, which is outside the statutory requirement.

The tenant did not request in their application to be allowed more time to dispute the Notice. Nor did the tenant attend the hearing to provide proof that they had an exceptional circumstance that prevented them from making their application on time. Therefore, I cannot consider section 66 of the Act.

Under section 47(5) of the Act, if a tenant who has received a notice under this section **does not make an application for dispute resolution in accordance with subsection (4)**, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date, which was February 28, 2021. I find the tenancy legally ended on February 28, 2021 and the tenant is overholding the premise.

Based on the above, I must dismiss the tenant's application to cancel the Notice.

As the landlord has met their statutory obligation under the Act, and I have found the Notice was completed in accordance with section 52 of the Act, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

As the landlord has accepted occupancy rent for the month of April 2021, I find that the landlord is entitled to an order of possession effective **April 30, 2021, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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 20, 2021

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Residential Tenancy Branch