



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on February 8, 2021, wherein the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause, issued on February 3, 2021 (the "Notice").

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on this date. Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 11:35 a.m. Additionally, 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.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Landlord testified that he served the Landlord with the Notice of Hearing and the Application on February 18, 2021 by registered mail.

Although the Tenant did not provide a copy of the registered mail tracking information in evidence before me, I accept his oral testimony as to the service on the Landlord by registered mail. The Tenant stated that on February 18, 2021 after he received the hearing package from Service B.C., he then walked across the street to the post office and immediately sent the package to the Landlord. The Tenant was unwavering in his testimony and I find him to be credible such that I accept his testimony in this regard.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of February 23, 2021 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Should the Notice be cancelled?

#### Analysis

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy.

Ending a tenancy is a significant request and must only be done in accordance with the *Act*. In this case, the Landlord's failed to call into the hearing to present any evidence or submissions in support of the Notice. I therefore find the Landlord has failed to meet the burden of proving the reasons for ending the tenancy. **The Tenant's request to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the Act.**

I wish to point out that even had the Landlord's attended, I would have cancelled the Notice as I find it failed to disclose a sufficient reason for ending this tenancy and failed to provide the Tenant with adequate details.

More particularly, the reasons cited on the Notice were that:

- the Tenant or a person permitted on the residential property by the Tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

The Landlord provided the following additional details on the Notice:

- Tenant repeatedly name calls other tenants
- Numerous reports of verbal abuse
- Quiet enjoyment of others is repeatedly disturbed

While it is preferable that residents in a shared building get along, and many do enjoy long term friendships, it is not uncommon for disagreements to occur. Section 47(1)(d)(i) speaks of *significant interference* and *unreasonable disturbances* and these words must be given their plain interpretation.

A landlord bears the burden of proving that the tenancy must end for significant reasons. I find that the information on the Notice does not speak to such serious and significant events; rather the Landlord has made only vague accusations of conflict between residents. I further find that the details provided to the Tenant on the Notice insufficient to allow him to properly respond and defend these allegations. This is in breach of the Principles of Natural Justice and in particular, the Tenant's right to know the claim against him.

Although not before me in this Application, the Tenant stated that the Landlord raised his rent in February 2021 during the rent freeze occasioned by the COVID-19 pandemic. The Landlord is reminded that rent may only be raised in accordance with the *Act* and the *Residential Tenancy Regulations* and that should the Landlord raise the rent contrary to law, the Tenant may reduce his rent pursuant to section 43(1)(5).

For greater clarity I include sections 43 and 43.1 of the *Act*:

**Amount of rent increase**

- 43** (1)A landlord may impose a rent increase only up to the amount
- (a)calculated in accordance with the regulations,
  - (b)ordered by the director on an application under subsection (3), or
  - (c)agreed to by the tenant in writing.
- (2)A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.
- (3)In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.
- (4)[Repealed 2006-35-66.]
- (5)If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

**Notice of rent increase has no effect**

- 43.1** (1)For the purposes of this section, a date that applies under section 90 (a), (b), (c) or (d), or that is prescribed under section 97 (2) (p), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.
- (2)A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice
- (a)is received before September 30, 2021, as determined under subsection (1) of this section, and
  - (b)has an effective date that is after March 30, 2020 and before January 1, 2022.

Conclusion

The Tenant's request for an Order canceling the Notice is granted. The tenancy shall continue until ended 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: May 12, 2021

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Residential Tenancy Branch