



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") to cancel a One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenants and their legal advocate ("**MM**") 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 tenants, MM, and I were the only ones who had called into this teleconference.

MM stated that she served that the landlord ("**PRC**", a property management company named in the tenancy agreement was the proper recipient of all legal notices) with the notice of dispute resolution form and supporting evidence package via registered mail on March 5, 2021 and April 30, 2021 respectively. She provided Canada Post tracking number confirming these mailing (reproduced on the cover of this decision) as well as a screenshot of the tracking data showing that each had been delivered, and a copy of the landlord's representative's signature. I find that the landlord served with these documents in accordance with the Act.

MM stated that, on May 25, 2021, the landlord posted written notices throughout the residential property stating that, as of June 1, 2021, the owner of the building would be changing property management companies. This information does not cause the tenants' service to be defective, as, at the time the application materials were served, PRC was the current property management company and the designated recipient of all legal documents, pursuant to the tenancy agreement.

Preliminary Issue – Landlord's Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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

As such, even though this is the tenant's application, the landlord bears the evidentiary burden to prove that the Notice was issued for valid reasons. As the landlord failed to attend the hearing, I find that it has failed to discharge this evidentiary burden. Accordingly, I cannot find that the Notice is valid.

As such, I grant the tenants' application and cancel the Notice. The tenancy shall continue.

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 28, 2021

Residential Tenancy Branch