



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes      CNC CNR

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

- 10 Day Notice to End Tenancy for Unpaid Rent (the "**10 Day Notice**") pursuant to section 46; and
- One Month Notice to End Tenancy for Cause (the "**One Month Notice**") pursuant to section 47.

(collectively, the "**Notices**")

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:14 am in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 am. The tenant and her legal advocate ("**AS**") 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 tenant, AS, and I were the only ones who had called into this teleconference.

This hearing was originally scheduled to occur on September 30, 2021. However, subsequent to it being set for this date, September 30 was declared the National Day for Truth and Reconciliation. As such, the hearing was rescheduled to October 22, 2021. The Residential Tenancy Branch (the "**RTB**") email both parties a copy of the Notice of Dispute Resolution Proceeding on September 29, 2021. However following this, the hearing was again rescheduled, with the consent of both parties, to today's date. The RTB emailed an updated Notice of Dispute Resolution Proceeding reflecting this change to the parties on October 19, 2021.

As such, despite not attending the hearing, I am satisfied that the landlord was aware of the hearing's date.

### Effect of the Landlord's Failure to Attend

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, despite this being the tenant's application, the landlord bears the evidentiary burden to prove the facts underpinning the Notices are true.

Pursuant to Rule of Procedure 7.4, a party (or a party's agent) must attend the hearing and present the party's evidence for it to be considered. As this did not occur, I do not find it appropriate to consider any of the documentary evidence submitted by the landlord to the RTB to the Residential Tenancy Branch in advance of the hearing.

As the landlord failed to attend the hearing and present its evidence, I find that it has failed to discharge its evidentiary burden.

As such, I grant the tenant's application, and order that the Notices are cancelled and of no force or effect. 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: October 28, 2021

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Residential Tenancy Branch