



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 the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to cancel a One Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

The Landlord did not attend this hearing, although I left the teleconference hearing connection open while the phone system was monitored for the entire hearing to enable the Landlord to call into this teleconference hearing which ended at scheduled for 9:30 am. The Tenant and the Tenant's advocate SW attended the hearing and were 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, SW and I were the only ones who had called into this teleconference until the hearing ended at 9:44 am.

SW stated he served that the Landlord with the Notice of Dispute Resolution Proceeding and some of the Tenant's evidence ("NODP Package") by registered mail on July 22, 2021. SW provided a Canada Post receipt with the tracking number (reproduced on the cover of this decision) confirming the NODP Package was served by registered mail. I find that NODP Package was served on the Landlord in accordance with sections 88 and 89 of the Act.

SW stated that additional evidence of the Tenant was served on the Landlord by facsimile on October 19, 2021. SW stated that the facsimile phone number appears on the 1 Month Notice for service on the Landlord. I find the Tenant's additional evidence was served on the Landlord in accordance with sections 88 of the Act. SW testified that the Tenant did not receive any evidence from the Landlord.

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 1 Month Notice was issued for valid reasons. As the Landlord failed to attend the hearing, I find that the Landlord has failed to discharge this evidentiary burden. Accordingly, I cannot find that the 1 Month Notice is valid.

As such, I grant the Tenant's application and cancel the Notice. The tenancy will continue until ended in accordance with the Act.

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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: November 5, 2021

Residential Tenancy Branch