



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant and the landlord attended the hearing and the landlord was accompanied by an Agent and a witness. The tenant indicated that an Agent for the tenant was expected to dial into the hearing, and the tenant was permitted to disconnect and reach the Agent. The tenant and the tenant's Agent joined the hearing within minutes.

At the commencement of the hearing the landlord's Agent indicated that all of the landlord's evidence was served to the tenant, but the landlord has not received any of the tenant's evidence. The tenant responded that he didn't know he was required to provide any evidence to the landlord.

Where a party relies on evidence in a hearing, each party is required to provide the same evidence to the opposing party. Since the tenant has not done so, I decline to consider any of the tenant's evidence. The tenant did not dispute receiving the landlord's evidentiary material, and all evidence of the landlord is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord's Agent testified that this month-to-month tenancy began on September 1, 1999 and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$620.00 was originally payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$900.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$310.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 3 one-room suites at the top of an apartment building, and the landlord does not reside on the property.

The landlord's agent further testified that on November 20, 2021 the tenant was served with a One Month Notice to End Tenancy for Cause by affixing it to the door of the rental unit and another identical copy in the tenant's mailbox. A copy of the Notice has not been provided for this hearing. The landlord's Agent offered to provide a copy during the hearing, however I declined to allow that. Any evidence that a respondent wishes me to consider must be provided to the Residential Tenancy Branch automated system and to the applicant at least 7 days prior to the hearing.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it, and that the Notice given is in the approved form. Since no one has provided a copy, I cannot be satisfied that any Notice given was given in the approved form. Therefore, I cancel the Notice, and the tenancy continues.

I advised the parties at the end of the hearing that if the landlord has cause, the landlord may issue a notice to end the tenancy but if it is disputed by the tenant, the landlord must be able to establish that it was given in accordance with the law.

Since the tenant has been successful with this application, the tenant is also entitled to recovery of the \$100.00 filing fee, and I order that the tenant be permitted to reduce rent for a future month by that amount.

Conclusion

For the reasons set out above, the Notice to end the tenancy served on November 20, 2021 is hereby cancelled and the tenancy continues.

I hereby order that the tenant be permitted to reduce rent for a future month by \$100.00 as full recovery of the filing fee.

This order is final and binding.

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: January 28, 2022

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Residential Tenancy Branch