



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1226668 BC LTD. DBA VOGUE  
HOTEL and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated September 20, 2021 (1 Month Notice).

The tenant, an ACT team member for the tenant, CS (Act member) and an advocate for the tenant, DD (advocate) attended the teleconference hearing. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated October 6, 2021 (Notice of Hearing), application and documentary evidence were considered. The advocate provided a registered mail tracking number in evidence. The advocate testified that the landlord was served with the Notice of Hearing, application and documentary evidence (Hearing Package) to the landlord's mailing address on October 6, 2021. A copy of the registered mail tracking number has been included on the style of cause for ease of reference. According to the Canada Post online registered website tracking website, the package was marked as "Unclaimed" and was returned to the sender. Section 90 of the Act applies, which deems that registered mail packages are deemed served 5 days after they are mailed. Based on the above, I find the landlord was deemed served with the Hearing Package as of October 11, 2021, which is 5 days after October 6, 2021.

### Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously

made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the advocate confirmed their email address at the outset of the hearing and stated that they understood that the decision would be emailed to them. As the landlord did not have an email address listed, the decision will be sent via regular mail to the landlord.

Pursuant to RTB Rules 7.1 and 7.3 the hearing continued without the landlord present as I find the landlord was deemed served as noted above.

#### Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

#### Background and Evidence

A copy of page one of the 1 Month Notice was submitted in evidence. The 1 Month Notice is dated September 20, 2021. The tenant filed their application to dispute the 1 Month Notice on September 28, 2021.

The advocate and tenant confirmed that they moved rental units in the same building since filing their application. The tenant's new rental unit is identified on the style of cause for ease of reference.

The landlord failed to attend the hearing to present evidence to support the causes listed on the 1 Month Notice.

#### Analysis

Based on the undisputed testimony of the tenant and advocate provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Regarding the 1 Month Notice, as the landlord did not attend the hearing to present evidence to support the 1 Month Notice, I find the landlord has failed to prove that the 1

Month Notice was valid. As a result, I **cancel** the 1 Month Notice dated September 20, 2021.

The 1 Month Notice has no merit and is of no force or effect.

### Conclusion

The 1 Month Notice dated September 20, 2021 has been cancelled and has no force or effect.

The tenant has changed rental units as noted on the style of cause.

The decision will be emailed to the tenant's advocate and sent by regular mail to the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 8, 2022

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Residential Tenancy Branch