



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT

Introduction

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

- the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- more time to make an application to cancel the Notice pursuant to section 66.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:42 am in order to enable the landlord to call into the hearing scheduled to start at 9:30 am. The tenant 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenant and I were the only ones who had called into the hearing.

The tenant testified he served that the landlord's property manager ("**TH**") personally with the notice of dispute resolution package and supporting documentary evidence on September 29, 2021. This amounts to proper service under sections 88 and 89 of the Act.

The 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, the landlord bears the burden to prove that the Notice was issued for valid reasons and is valid. He must also prove when the Notice was served. As the landlord did not attend the hearing, he cannot discharge this evidentiary burden.

I grant the tenant's application. The Notice is cancelled and of no force or effect. The tenancy shall continue.

I also note that, at the outset of the hearing, the tenant indicated that he was appearing under protest. He stated that he has tinnitus, which makes it difficult to participate in a hearing over the telephone. I asked if he had made a request that this hearing be held in a different format (in person, for example). He stated that he had not, as he was unfamiliar with this process. I advised him that, in the future, if he wants a hearing to be in a different format, he needs to make such a request to the Residential Tenancy Branch before the hearing date and provide supporting documentation of his medical condition. A decision about the format of the hearing will be made based on these documents.

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: February 1, 2022

Residential Tenancy Branch