



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice);
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- An order restricting or setting conditions on the Landlord's right to enter the rental unit.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on March 8, 2022, and was attended by the Tenant B.C., who provided affirmed testimony. Due to an error on my part, I was several minutes late to the hearing, as I initially attended the incorrect teleconference. I attended the correct teleconference at approximately 11:11 A.M. and only the Tenant was present. Neither the Landlord nor an agent for the Landlord attended. There was no indication in the online conference management system that another participant had called into the teleconference and disconnected prior to my attendance. Further to this, rule 7.2 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that in the event of a delay to the start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing. As a result, I find that even if a party had called into the hearing during my absence, and disconnected prior to my attendance, they did so contrary to rule 7.2 of the Rules of Procedure. The hearing therefore continued with only the Tenant and I pursuant to rule 7.3 of the Rules of Procedure. The Tenant was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Landlord nor an agent for the Landlord attended the hearing, I confirmed service of these documents as explained below. The Tenant testified that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes a copy of the Application and the Notice of Hearing, were sent to the Landlord by registered mail on October 28, 2021. The Tenant provided me with a copy of the registered mail tracking slip, which includes the tracking number and a date stamp of October 28, 2021. During the hearing the Tenant logged into the Canada Post online tracking system and stated that the system shows that it was delivered on November 1, 2021, at 2:27 P.M.

Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Tenant on October 26, 2021, to be given or served by October 29, 2021. As I am satisfied that the registered mail was sent to the Landlord on October 28, 2021, I am satisfied that the Tenant complied section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure. I am also satisfied that the Landlord was served with the NODRP on November 1, 2021, in accordance with section 89(1)(c) of the *Act*.

I confirmed that the hearing details shown in the Notice of Hearing were correct and I note that the Tenant had no difficulty attending the hearing using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Landlord or an agent acting on their behalf.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

### Preliminary Matters

#### Preliminary Matter #1

The Tenant B.C. stated that the second person named as a tenant in the Application, A.B., is a minor child and an occupant of the rental unit, not a tenant under the tenancy agreement. The Application was therefore amended to remove A.B. as a named tenant/applicant.

#### Preliminary Matter #2

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the *Act*. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claims relate to whether the tenancy will continue or end. As the other claims are not sufficiently related to the One Month Notice, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- An order for the Landlord to comply with the *Act*, regulation, or tenancy agreement; and
- An order restricting or setting conditions on the Landlord's right to enter the rental unit.

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice.

### Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

### Background and Evidence

The Tenant stated that they were personally served with the One Month Notice on October 25, 2021, and Branch records show that they disputed it the following day on

October 26, 2021. The Tenant submitted a copy of the One Month Notice which is signed and dated October 25, 2021, has an effective date of November 30, 2021, and states that the tenancy is being ended because:

- The tenant has allowed an unreasonable number of occupants in the rental unit;
- The tenant has breached a material term of the tenancy agreement; and
- The rental unit must be vacated to comply with a government order.

In the details of cause section the Landlord provided further details regarding why they believe that the Tenant has another person residing in the rental unit with them.

The Tenant denied the allegations made by the Landlord in the One Month Notice but stated that in any event, they vacated the rental unit on February 1, 2022. Although the teleconference remained open for 43 minutes, neither the Landlord nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

### Analysis

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the *Act* to issue the notice. As the Landlord did not attend the hearing or provide any evidence for consideration, I find that they have failed to establish, on a balance of probabilities, that they had cause to end the tenancy under the *Act*. As a result, the One Month Notice is cancelled and of no force or affect.

### Conclusion

I order that the One Month Notice dated on October 25, 2021, be cancelled.

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: March 8, 2022

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Residential Tenancy Branch