



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC-MT, FFT**

### Introduction

This hearing was convened by way of conference call in response to the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") in which the Tenant seeks:

- more time to make an application to cancel the Landlord's One Month Notice to End Tenancy for Cause dated October 6, 2021 ("1 Month Notice") pursuant to section 66;
- if an extension of time is granted, cancellation of the 1 Month Notice pursuant to section 47; and
- authorization to recover the filing fee of his application from the Landlord.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 10:04 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. The Landlord and the Landlord's advocate ("SA") 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 Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord, SA and I were the only ones who had called into this teleconference.

### Preliminary Matter – Failure of Tenant to Serve NDRP on Landlord

The Landlord stated he was not served with the NDRP by the Tenant. The Landlord stated he obtained a copy of the NDRP from the Residential Tenancy Branch. I find the Tenant did not serve the NDRP on the Landlord as required by the provisions of section 89 of the Act.

### Preliminary Matter – Correction of Rental Address

I noted the street address of the rental unit was incomplete. The Landlord requested that I amend the Tenant's application to correct the rental address by the insertion of the word "Road" after the name of the street.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Tenant could reasonably have anticipated the Landlord would seek an amendment to correct the address of the rental unit, I amend the application to insert "Road" after the name of the street.

### Preliminary Matter – Effect of Non-Attendance of Tenant at Hearing

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") 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 burden of proof it is more likely than not that the 1 Month Notice is valid. The Landlord must meet this burden even if the Tenant does not attend the hearing.

Rules 7.1, 7.3 and 7.4 of the RoP state:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, the Tenant's application is dismissed without leave to reapply. As the Tenant was not present at the hearing, I will not consider any of the evidence submitted by the Tenant in advance of the hearing when adjudicating his application to cancel the 1 Month Notice.

Preliminary Matter – Tenant has Vacated Rental Unit

The Landlord stated the Tenant vacated the rental unit around January 10 to 15, 2022. As the tenancy has ended as a result of the Tenant vacating the rental unit, the Landlord does not require an Order of Possession pursuant to section 55(1) of the Act. Based on the foregoing, it is unnecessary for the Landlord to show cause for ending the tenancy pursuant to the 1 Month Notice.

Conclusion

The Tenant's application is dismissed without leave to reapply.

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: April 13, 2022

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Residential Tenancy Branch