



# 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.

This matter was reconvened from a prior hearing on February 3, 2022. I issued an interim decision setting out the reasons for the adjournment on that date (the "**Interim Decision**"). This decision should be read in conjunction with Interim Decision.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlord's property manager ("**MC**") and building manager ("**MR**") 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 MC, MR, and I were the only ones who had called into the hearing.

MC confirmed that the tenant served the landlord with the notice of dispute resolution proceeding package and supporting evidence. I did not inquire whether the landlord served the tenant with its documentary evidence, as, for the following reasons, it was not necessary for me to do so.

### **Preliminary Issue – Effect of Tenant's Non-Attendance**

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 onus to prove that the Notice was issued for valid reasons. However, before the reasons for the issuance of the Notice can be assessed, the tenant bears the onus to prove that he is entitled more time in which to dispute the Notice. By failing to attend the hearing, I find that the tenant has failed to provide sufficient (or any) evidence to show that he is entitled to an extension of time. As such, I dismiss his application for more time in which to dispute the Notice.

MR testified that the landlord served the tenant with the Notice on August 24, 2021 by posting it on the door of the rental unit. The tenant did not dispute the Notice until September 21, 2021.

Section 47 of the Act, in part, states:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The tenant did not dispute the Notice within this 10-day period. Accordingly, he is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The Notice specified an effective date of August 23, 2021. This is plainly a mistake, as it is the day before the Notice was served.

However, section 53 of the Act causes an incorrect effective date on a notice to end tenancy to be “automatically changed” to the earliest effective date permitted. As the Notice was posted on the door of the rental unit on August 24, 2021, it is deemed to have been served three days later pursuant to section 90 of the Act. As such, the earliest effective date is September 30, 2021.

Accordingly, the tenant is conclusively presumed to have accepted the tenancy ended on the date. The landlord is therefore entitled to an order of possession. At the hearing, MC indicated that, as the ministry has paid June 2022 rent, the landlord would like the order of possession effective June 30, 2022.

**Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by June 30, 2022 at 1:00 pm.

I ordered the landlord to serve the tenant with a copy of this decision and the attached order of possession no later than three days after receiving it from the Residential Tenancy Branch.

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: June 7, 2022

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Residential Tenancy Branch