



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **TT: CNC**  
                             **LL: OPC FFL**

### Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application for dispute resolution (“Tenant’s Application”) for cancellation a One Month Notice for Cause dated March 26, 2022 (“1 Month Notice”) pursuant to section 47.

The Landlord made one application for dispute resolution (“Landlord’s Application”) for:

- an Order of Possession for cause pursuant to section 47; and
- authorization to recover the filing fee of the Landlord’s Application from the Tenant pursuant to section 72.

The Landlord, the Tenant and the Tenant’s advocate (“BA”) attended the hearing.

I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant stated she served the Notice of Dispute Resolution Proceeding (“Tenant’s NDRP”) for the Tenant’s Application on the Landlord in-person but could not recall when she served it. The Landlord acknowledged he received the Tenant’s NDRP sometime in April 2022. I find the Tenant’s NDRP was served by the Tenant on the Landlord pursuant to the provisions of section 88 of the Act.

The Landlord stated he served the Notice of Dispute Resolution Proceeding and his evidence (“Landlord’s NDRP Package”) for the Landlord’s Application on the Tenant’s

door but could recall when he served it. The Tenant acknowledged she received the Landlord's NDRP Package. I find the Landlord's NDRP Package was served by the Landlord on the Tenant pursuant to the provisions of sections 88 and 89 of the Act.

#### Preliminary Matter – Service of Tenant's Evidence on Landlord

The Tenant stated she served her evidence on the Landlord in-person on July 20, 2022.

Rules 3.14 and 3.17 of the *Residential Tenancy Branch Rules of Procedure* state:

#### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

#### **3.17 Consideration of new and relevant evidence**

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8.

[Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment]

The Tenant served her evidence on the Landlord less than 14 days before the hearing of the Tenant's Application. The Tenant was unable to explain why her evidence should be considered to be new and relevant evidence. As such, I find the Tenant's evidence is not admissible for the hearing.

#### Preliminary Issue – Landlord Cancelled 1 Month Notice at Hearing

During the hearing, the Landlord stated he wanted to cancel the 1 Month Notice and did not want to proceed with the hearing. The Tenant did not object to the Landlord's request.

I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the provisions of the Act. As the Landlord has requested the 1 Month Notice to be cancelled, I dismiss the Landlord's Application without leave to reapply.

As the 1 Month Notice has been cancelled, the Tenant's claim for cancellation of the 1 Month Notice is now unnecessary. As such, I dismiss the Tenant's Application without leave to reapply.

#### Conclusion

The 1 Month Notice is cancelled. The Tenancy continues until ended in accordance with the provisions of the Act.

The Landlord's Application is dismissed without leave to reapply.

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: July 28, 2022

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Residential Tenancy Branch