



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, RP

### Introduction

On September 3, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* and seeking a repair Order pursuant to Section 32 of the *Act*.

The Tenant attended the hearing with I.C. attending as an advocate for the Tenant. The Landlord attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord’s One Month Notice to End Tenancy for Cause, and the other claim was dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

The Tenant advised that she served the Landlord the Notice of Hearing and evidence package by registered mail on September 23, 2022, and that it was refused by the Landlord (the registered mail tracking number is noted on the first page of this

Decision). As well, she submitted proof of service of this package, and she referred to a picture of the returned package, that was submitted as documentary evidence, where the Landlord wrote “RTS refused” on the package.

The Landlord advised that she did not receive this package, but she confirmed that the address the Tenant sent the package to was her correct mailing address. As well, she indicated that many of her family members lived at that address, and that they may have refused the package. Given that the Landlord provided this address for service on the Notice, the Landlord should be prepared to receive documents there. If she has other people living there who refuse service of documents, this is a problem that she must address.

Based on the solemnly affirmed testimony and evidence before me, I am satisfied that the Landlord was deemed to have received the Tenant’s Notice of Hearing and evidence package, five days after it was mailed, in accordance with Sections 89 and 90 of the *Act*. As such, the Tenant’s evidence will be accepted and considered when rendering this Decision.

The Landlord advised that she served her evidence to the Tenant by hand on January 16, 2023, and the Tenant confirmed that she received it that day. However, both the Tenant and I.C. indicated that they did not have sufficient time to review this evidence, or to respond to it.

Records indicate that the Landlord contacted the Residential Tenancy Branch on October 21, 2022, that she requested a copy of the Notice of Hearing package, and that she was provided with a copy. Moreover, the Landlord uploaded documentary evidence to the Residential Tenancy Branch Dispute Management System on November 25, 2022. As the Landlord knew of this hearing for a substantial amount of time, and uploaded this documentary evidence months ago, it is unclear why the Landlord waited so long to serve this evidence to the Tenant. It is possible that the Landlord attempted to do this in order to prejudice the Tenant. As this evidence was served late, and not in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties could not agree on when the tenancy started, and there was no written tenancy agreement, or any other documentary evidence, submitted by either party to support either position. However, both parties agreed that rent was established at \$1,150.00 per month, and that it was due on the fifteenth day of each month. As well, neither party could agree with whether a security deposit was paid or not.

All parties did agree that the Notice was served by being placed in the Tenant's mailbox on August 29, 2022, and the reason the Landlord served the Notice is because "The Tenant is repeatedly late paying rent". The effective end date of the tenancy was noted as September 30, 2022, on the Notice.

I.C. advised that the Landlord did not serve the entire Notice as only the first two pages of the three-page Notice were served. As such, this was not a complete Notice, and was invalid.

The Landlord advised that the entire Notice was served to the Tenant; however, she did not have any documentary evidence to corroborate this service.

Submissions were made by both parties with respect to the reason the Notice was served.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 47 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Tenant is repeatedly late paying rent.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

In reviewing the Notice that was submitted as documentary evidence, it is clearly incomplete as there were only two of the three pages submitted. While the Landlord advised that she did serve the entire Notice, I note that she did not have any proof of this. As well, I find it important to note that it is up to the Landlord to provide sufficient evidence to corroborate service of the Notice, and then to substantiate the reason for serving the Notice.

When reviewing the evidence and testimony before me, given that it appears as if the Landlord may have already attempted to prejudice the Tenant by serving her evidence as late as possible, I find it more likely than not that the Landlord may have been attempting to prejudice the Tenant by not serving the entire Notice. As the additional page of the Notice contains important information for the parties, without having this page, I find that it could have prejudiced the Tenant. Ultimately, I do not find that this Notice complies with Section 52 of the *Act* as the entire approved form appears not to have been served. As such, I find that the Notice of August 29, 2022, is cancelled and of no force and effect.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of August 29, 2022, to be cancelled and of no force or effect.

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: January 23, 2023

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Residential Tenancy Branch