



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      CNC FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

### **Preliminary Issue: Service of Application**

The landlord testified that the date on the Notice of Dispute Resolution Hearing is November 23, 2022, and that they did not receive a copy until November 29, 2022 from the tenant, which the landlord argued was not served within the required 3 day period.

The tenant testified that they had filed a paper application on November 9, 2022, which noted their correct email address. The tenant testified that due to a clerical error by a staff member at the RTB, the hearing documents were not sent to the tenant's correct email address. The tenant testified that they had to call the RTB to have the issue corrected, and subsequently received the documents on November 29, 2022. The tenant testified that they served the landlord with the Notice of Dispute Resolution

Proceeding Package on November 29, 2022 after receiving the documents from the RTB that day.

RTB Policy Guideline #12 sets out the following requirements for service of the Notice of Dispute Resolution Proceedings on the respondent:

### **12.1 TIME LIMIT TO SERVE NOTICE OF DISPUTE RESOLUTION PROCEEDING PACKAGE**

*The Legislation and Rules of Procedure state that a person who applies for dispute resolution must give a copy of the Notice of Dispute Resolution Proceeding Package ("Notice Package") to the other party within 3 days of the Notice being made available by the Residential Tenancy Branch, or within a different period specified by the director.*

*As noted in Section 12 of this Policy Guideline, the objective of serving documents is to give notice to the person who has been served that an action has been or will be taken against them. An applicant failing to serve the Notice Package within 3 days of it being made available does not necessarily mean that the respondent was not made aware of the action being taken against them and that they did not have sufficient time to respond to the matters of dispute. Instead, the Legislation gives arbitrators the authority to extend the time limit to serve the Notice Package if they find that the Package was sufficiently served for the purposes of the Act on a later date.*

*For example, say a Notice of Dispute Resolution Proceeding was made available on January 1 and the hearing is on June 1, and the applicant served the Notice Package on the respondent on January 15. Even though the applicant did not serve the Notice Package within 3 days, an arbitrator may find that it was served with enough time for the respondent to understand and respond to the claims made against them. An arbitrator will consider the principles of procedural fairness when deciding whether to extend the time limit. If a respondent feels that they were not provided sufficient notice, they should raise these concerns with the arbitrator at their hearing.*

I have reviewed the internal notes on file, and I find that the notes reflect the tenant's sworn testimony. The tenant was sent a copy of the Notice of Dispute Resolution Proceeding on November 29, 2022. As the tenant served the landlord with the Notice of Dispute Resolution Proceeding on that same date, I find that the tenant has met the requirements for service of this Application. In accordance with sections 88 and 89 of the Act, I find the landlord duly served with the tenant's dispute resolution package.

The tenant confirmed receipt of the landlord's evidentiary materials. In accordance with section 88 of the Act, I find the tenant duly served with the landlord's evidence.

**Preliminary Issue: Was the Tenant Served with a Valid 1 Month Notice?**

The tenant confirmed receipt of a 1 Month Notice to End Tenancy on November 2, 2022, which the tenant disputed on November 9, 2022.

Section 52 of the *Act* provides the following requirements for form and content of a Notice to End Tenancy

**52** *In order to be effective, a notice to end a tenancy must be in writing and must*

*(a) be signed and dated by the landlord or tenant giving the notice,*

*(b) give the address of the rental unit,*

*(c) state the effective date of the notice,*

*(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*

*(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*

*(e) when given by a landlord, be in the approved form.*

A copy of the 1 Month Notice dated November 2, 2022 was submitted in evidence by the landlord. The copy provided by the landlord in evidence is not signed by the landlord. The signature box next to the landlord's name was left blank. I find that the 1 Month Notice served on the tenant does not meet the form and content requirements of section 52(a) of the *Act*, and is therefore invalid. Accordingly, I allow the tenant's application to cancel the 1 Month Notice dated November 2, 2022. The 1 Month Notice is of no force or effect, and the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful with their application, I find that the tenant is entitled to recover the filing fee paid for this application.

**Conclusion**

I allow the tenant's application to cancel the landlord's 1 Month Notice to End dated November 2, 2022. The 1 Month Notice is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I find that the tenant is entitled to recover the filing fee for this application. I allow the tenant to implement a monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 23, 2023

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Residential Tenancy Branch