



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-MT**

Decision

I order that the tenant's application to cancel the One Month Notice is granted. The Notice is void and of no effect.

The tenancy shall continue until it is ended in accordance with the Act.

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- Grant of more time to file a Dispute to a Notice to End Tenancy pursuant to section 66;

The agent DF attended for the tenant ("the tenant"). The agent explained he and the witness AR are housing and support workers who are acting on behalf of the tenant who was unable to attend the hearing because of medical reasons.

The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 19 minutes to allow the landlord the opportunity to call.

1. Preliminary Issue - Service

The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant and the witness AR provided testimony regarding service of the Application for Dispute Resolution and Notice of Hearing on the landlord.

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The witness AR testified as follows. AR is also a housing and support worker for the tenant and acted on behalf of the tenant in this application.

Shortly after February 9, 2023 (exact date uncertain), AR sent the landlord the Application for Dispute Resolution and Notice of Hearing by registered mail to his residential address on behalf of the tenant.

AR testified that the landlord acknowledged receipt of the tenant's documents in later discussions with AR.

I accept the uncontradicted affirmed testimony of the tenant and witness and find as follows. The witness AR sent the Notice of Hearing and Application for Dispute Resolution on behalf of the tenant to the landlord's residence shortly after February 9, 2023, the date of the application, although the date was not established. The landlord acknowledged receipt of the documents in subsequent discussions with AR.

Pursuant to the tenant's and AR's evidence and sections 89 and 90, I find the tenant established service upon the landlord of the Notice of Hearing and Application for Dispute Resolution.

2. Preliminary Issue – Landlord Shows Why Notice was Issued

Section 55 of the Act requires that when a tenant applies for Dispute Resolution seeking to cancel a Notice issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the tenant's Application is dismissed and the landlord has issued a Notice that is compliant with the Act.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually, the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's Notice, the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

The One Month Notice was submitted as evidence by the tenant. The Notice is dated January 29, 2023, and the tenant applied to cancel the Notice within 15 days.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the Act and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the One Month Notice is granted. The Notice is void and of no effect.

The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

I order that the tenant's application to cancel the One Month Notice is granted.
The Notice is void and of no effect.

The tenancy shall continue until it is ended in accordance with the Act.

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 17, 2023

Residential Tenancy Branch