

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNL

## Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end his tenancy and an extension of time to make his application and a cross-application by the landlord for an order of possession. Both parties participated in the conference call hearing.

## Issue(s) to be Decided

Is the tenant entitled to an extension of time to file his application to dispute the notice to end tenancy?

## Background and Evidence

The landlord testified that the tenant was served with a one-month notice to end tenancy for cause (the "Notice") on May 22 by registered mail. The landlord testified that the Notice was not retrieved at the post office by the tenant, so the landlord sent a copy of the Notice by ordinary mail to the tenant on June 22. The tenant testified that he did not receive the Notice until July 3. The tenant filed an application for dispute resolution to dispute the Notice on July 21. When asked why he did not file his application within 10 days of having received the Notice, the tenant explained that he did not know what to do and he assumed that because criminal charges relating to the incident which gave rise to the giving of the Notice had been dropped, that the Notice would no longer take effect.

## Analysis

I am satisfied that the tenant did not receive the Notice until July 3. However, section 47(4) of the Act sets a 10-day time limit to file an application for dispute resolution to dispute a notice of this nature. Section 66(1) of the Act provides that an extension of time to file a dispute may be granted only where in exceptional circumstances. I am not

satisfied that exceptional circumstances exist in this case. The tenant received the Notice together with a cover letter which advised the tenant that the landlord expected him to vacate the rental unit. The tenant should have known that the landlord intended to enforce the Notice. I decline the tenant's request to extend the time limit.

I find that the tenant did not file his application for dispute resolution within the required time frame and accordingly find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenant's claim to set aside the Notice is dismissed.

I find that the landlord is entitled to an order of possession. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I find that the landlord should bear the cost of the filing fee paid to bring their application. Section 55 of the Act permits a landlord to orally request an order of possession at a hearing dealing with a tenant's claim to set aside a Notice. As the landlord's application was unnecessary, I see no reason to burden the tenant with the cost of the filing fee even though the landlord was successful.

### Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession.

Dated September 10, 2009.

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