



# **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

CNC

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### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant filed on February 1, 2010 in which the applicant was requesting more time to file to dispute a Notice to End Tenancy for Cause. The tenant was seeking an order to cancel the One-Month Notice dated December 22, 2009 and effective January 31, 2010. Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is to be granted more time to file to dispute a Notice to End Tenancy for Cause.
- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause should be cancelled:

### **Background and Evidence**

Submitted into evidence by the applicant/tenant in support the application was a copy of the One-Month Notice to End Tenancy for Cause dated December 22, 2009 with effective date of January 31, 2010. The purported cause indicated on the notice was that the tenant had significantly interfered with and or unreasonably disturbed other

occupants or the landlord or; seriously jeopardized the health or safety or lawful or lawful right of another occupant or the landlord. The parties testified that the Notice was served on the tenant on or before December 29, 2009.

The tenant testified that he was prevented from filing to dispute the Notice within the 10-day time limit specified under the Act because of a serious medical situation. The tenant testified that he had filed the application on February 1, 2010 seeking to cancel the One-Month Notice issued and was aware that he filed beyond the deadline. However, the tenant stated that he felt that his situation warranted an extension of the time limit for filing and stated that he should now be permitted to argue the merits of the case, as he was prepared to do.

### **Analysis: Request for Extended Time to File**

Section 47 (1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has either: significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Once the One-Month Notice has been issued, section 47(4) provides that a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this instance the ten-day period would have expired on or before January 8, 2010. I find that the tenant made application to dispute the notice on February 1, 2010, which was more than ten days after receiving the notice and has asked that the time limit be extended based on the tenant's circumstances.

Section 66 (1) gives a dispute resolution officer the authority to extend some time limits established by the Act in exceptional circumstances. However, the Act specifically states in section 66(3) that the dispute resolution has no authority to extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

In this instance the effective date of the One-Month Notice was January 31, 2010. I find that the tenant made application on February 1, 2010 which was beyond the effective date of the Notice.

Given the above, I find that I lack the statutory authority to extend the date to allow the tenant to file to dispute the notice beyond January 31, 2010 and therefore the tenant's request to be permitted to validly dispute the notice must be denied.

### **Analysis: Notice to End Tenancy**

As mentioned previously in this decision, section 47 (1) of the Act allows a landlord to end a tenancy by giving a One-Month Notice to End the Tenancy for Cause on the basis that a tenant significantly interfered with, unreasonably disturbed, or had seriously jeopardized the health, safety, lawful right or interest of others, and the tenant may then dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

Section 47 (5) of the Act states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days of receiving it, the tenant:

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Based on the testimony and evidence presented, I find that the One-Month Notice was issued by the landlord and received by the tenant and was not disputed within the deadline of 10 days. I find that ,given the above, under the Act the One Month Notice cannot be cancelled and remains in effect.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), on request of a landlord, I

must issue an order of possession when I have dismissed a tenant's application and upheld the notice to end tenancy.

In the interest of minimizing the drastic impact of the end of this tenancy on the applicant/tenant, the landlord stated that it was willing to work with the tenant to help him locate other appropriate housing.

### **Conclusion**

Based on the above, I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. 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.

February 2010

Date of Decision

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Dispute Resolution Officer