



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MT

### Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy. The tenant applies for an extension of time to dispute the notice to end tenancy.

Both the landlord and tenant participated in the teleconference hearing and gave affirmed evidence. Witnesses for the landlord and tenant also gave affirmed evidence.

### Issue(s) to be Decided

Is the tenant entitled to an extension of time to dispute the notice to end tenancy?  
If so, should the notice to end tenancy be cancelled?

### Background and Evidence

The tenant gave evidence that the Notice to End Tenancy for Cause (the "Notice") was personally handed to him on December 12, 2013. The Notice specifies a move-out date of January 31, 2014.

According to Section 47(4) of the Act, a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

A party may file an application for dispute resolution either online, by paying the RTB filing fee of \$50.00, or in person at an RTB office, by either paying the RTB filing fee of \$50.00 or by requesting and obtaining a fee waiver. I note the tenant received a fee waiver on January 6, 2014.

The tenant's Application for Dispute Resolution was accepted at the RTB on January 6, 2014 according to the date stamp on the document. The handwritten date next to the tenant's signature is "Jan 6/14".

The RTB office in Burnaby is open to the public weekdays from 9 a.m. to 4 p.m. During the holiday season, the Burnaby office was closed on December 18 from 11:30 a.m. to 1:00 p.m., and all day December 25 and 26, 2013 and January 1, 2014.

The RTB also operates two outreach offices in downtown Vancouver. The office at 520 Richards Street is open weekdays from 9 a.m. to 12 p.m. and the office at 390 Main Street is open weekdays from 1 p.m. to 4 p.m. During the holiday season, the Richards Street and Main Street offices were closed on December 18, and from December 23, 2013 through January 1, 2014 inclusive. The Richards Street and Main Street offices re-opened on January 2, 2014. I note that the RTB website was in error, in that it did not include December 27 and 30, 2013 among the announced holiday closures for the Richards Street and Main Street offices.

The tenant gave evidence that he went to the RTB office at Main Street and Hastings Street (390 Main Street) on December 20, 2013. The tenant's evidence is that RTB staff told him to come in after the holidays to finish off his application. The tenant's evidence is that RTB staff told him to take his application form to his lawyer and they would tell him what to do with it.

The tenant gave evidence that he took the form to his lawyer's office on December 20, 2013. A representative of the law office confirmed the tenant brought the Application for Dispute Resolution to the law office on December 20, 2013 however no one was available to see him. The law office filled out the form and left it at their front counter for the tenant to pick up. The law office called the front desk of the tenant's building, however there was no answer. At some point, another tenant of the same building came to the law office and, while he was there, picked up the tenant's application and brought it to him.

The tenant gave evidence that he took the completed application to the RTB on Monday, January 6, 2014.

I have not summarized the parties' evidence regarding the cause for ending the tenancy, for reasons explained below.

### Analysis

The tenant received the Notice on December 12, 2013. The tenth day after December 12, 2013 falls on Sunday, December 22, 2013.

The calculation of time is set out in the *Interpretation Act* [RSBC 1996] c. 238, at Section 25. The relevant subsections are:

- (2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- (3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- (4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.
- (5) In the calculation of time not referred to in subsection (4), the first day must be excluded and the last day included.

I find that the tenant had until the close of business on Monday, December 23, 2013 to file an application for dispute resolution within time. The RTB Burnaby office was open on that day until 4 p.m.

I accept the tenant's evidence that he went to the RTB office at 390 Main Street on Friday, December 20, 2013. However, I do not accept the tenant's evidence that the RTB staff told him to review his application with his lawyer before submitting it. The RTB staff would very likely have asked the tenant when he received a notice to end his tenancy, and would have been well aware that the tenant's deadline for filing an application for dispute resolution was imminent. I find it is most likely that, if the RTB staff were told on December 20, 2013 that the tenant had received a notice to end tenancy on December 12, 2013, RTB staff would have emphasized to the tenant that his application should be filed either at the RTB Main Street office on December 20, 2013, or at the RTB Burnaby office on December 23, 2013.

If the tenant has limited mobility, and that is not in evidence, I could find that the tenant was only able to access the RTB Main Street office. Even if that were the case, the tenant could have accessed the RTB Main Street office on January 2, 2014.

In any case, I find the tenant filed his application beyond the time for doing so that is set out in Section 47.

Section 66(1) allows me to extend a time limit established by the Act only in exceptional circumstances. I find that the tenant has not established that any exceptional circumstances existed to prevent him filing his application within time. The tenant could have come to the RTB Main Street office to file his application on December 13, 16, 17, 19, or 20. If the tenant wished to have his lawyer assist him with his application, he could have come to the RTB Main Street office earlier to allow time for this.

Alternatively, he could have brought his completed application to the RTB Burnaby office on December 23, 2013. If the tenant has a mobility problem which prevents him from coming to the RTB Burnaby office, that was not put into evidence and, even in that case, the tenant could have come to the RTB Main Street office on January 2, 2014.

Since the tenant has not established any exceptional circumstances, I am unable to extend the time limit for the tenant to apply to dispute the Notice. The tenant's application for an extension of time is dismissed.

According to Section 47(5), if a tenant does not make application for dispute resolution in accordance with [the statutory deadline], the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Accordingly, the tenant's application to cancel the Notice is dismissed.

### Conclusion

The tenant's application is dismissed.

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: February 25, 2014

