



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPB, FF; MT, CNC, O

### Introduction

This hearing was convened in relation to the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause and breach of an agreement pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

This hearing was also convened in relation to the tenant's application pursuant to the Act for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an "other" remedy.

The landlord was represented by his two agents. The tenant attended with her advocate. The tenant's daughter attended as a witness; however, her testimony was not required.

Neither party in attendance raised any issues with service of documents.

### Preliminary Issue – Tenant's Application for More Time

The tenant applied for more time to file for dispute of the 1 Month Notice.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the time required is strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

On the basis of the date of the 1 Month Notice and the tenant’s admission, I find that the tenant received the 1 Month Notice on 22 July 2015. The 1 Month Notice was dated 22 July 2015. In accordance with subsection 47(5) of the Act the tenant had ten days from receipt of this notice to file an application to cancel it, that is 1 August 2015. The tenant’s application was filed 21 August 2015.

The advocate stated that the tenant understood she had ten days from the date of the landlord’s signature to file for dispute resolution. The advocate submitted that the tenant could not file in time because she has a constellation of health concerns including, PTSD, agoraphobia, and depression. I was not provided with any evidence that corroborates the tenant’s testimony in respect of her health diagnoses. The tenant provided a letter from a social worker in the hospital explaining that the tenant had emergency surgery on 20 August 2015. The tenant explained that her son could not assist her as he attends college full time. The advocate submitted that the tenant’s daughter is seventeen and unable to assist the tenant. The advocate submitted that the tenant does not have a support system.

The landlord’s agents opposed the tenant’s application for more time. The agent RG stated that the tenant was observed out of the rental unit and well by the landlord. The agent RG testified that none of the health problems of which the tenant complains were observed by the landlord.

At the hearing I denied the tenant’s application for more time. I provided oral reasons. I informed the parties that I would provide written reasons that detailed my decision. These are the reasons.

I found that the tenant had failed to displace her burden of proof. In particular, the tenant failed to show, on a balance of probabilities, that she had exceptional circumstance that caused her to miss the filing deadline. The tenant understood correctly that she had ten days from 22 July 2015. The tenant has not provided any corroborating evidence for her health diagnoses. The tenant has provided a letter that refers to an emergency surgery that occurred on 20 August 2015, but the letter does not explain if the condition for which the surgery was required affected the tenant's ability to file her application almost three weeks earlier. This evidence is insufficient to persuade me that this is a reason constituting exceptional circumstances.

### Analysis

After I provided my decision on the tenant's application for more time, the parties engaged in a settlement negotiation.

Pursuant to section 63 of the Act, an arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their disputes.

During this hearing, the parties reached an agreement to settle their disputes under the following final and binding terms:

1. The tenant agreed to withdraw her application.
2. The landlord agreed to withdraw his application.
3. The landlord agreed to withdraw the 1 Month Notice.
4. The tenant agreed to the following conduct:
  - a. The tenant will remove the cameras on the outside of the rental unit.
  - b. The tenant will not engage in conflict with the landlord.
  - c. The tenant will not take photographs of the landlord, occupants of the residential property, or prospective occupants of the residential property.
  - d. The tenant will not speak to prospective occupants of the residential property.

5. The tenant agreed to provide possession of the rental unit to the landlord on or before one o'clock in the afternoon on 31 December 2015.
6. The tenant agreed to pay rent under the tenancy agreement for the remainder of the tenancy.

The agent RG confirmed she had authority to bind the landlord to this agreement. The agent RG stated that she understood the terms of the agreement. The tenant stated that she understood the terms of this agreement. The parties agreed that these particulars comprise the full and final settlement of their disputes for both parties.

The parties may enter into a separate agreement that changes the date of possession; however, this can only be done with express waiver from the landlord that must be documented in writing.

### Conclusion

The tenant's application is withdrawn. The landlord's application is withdrawn. The landlord's 1 Month Notice is cancelled.

The attached order of possession is to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with this order in the above terms and the landlord should serve the tenant with this order so that it may enforce it in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: October 29, 2015

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Residential Tenancy Branch

