



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (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; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

Both parties were represented at the hearing and given full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The tenant represented herself with the aid of an advocate. The landlord was represented by her agent CL (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 1 Month Notice, the tenant's application and their respective evidence.

### Issue(s) to be Decided

Is the tenant entitled to more time to file the application to dispute the landlord's 1 Month Notice? Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties agreed on the following facts. This tenancy began in February, 2017. The monthly rent is \$725.00 payable on the first of each month. The landlord personally served the tenant with a 1 Month Notice on June 30, 2017. The tenant filed her application for dispute resolution to dispute the 1 Month Notice on July 12, 2017.

The tenant said that she “didn’t know” why she did not file her application prior to July 12, 2017. She said she attended a Service BC location in person on that date and filed her application for dispute resolution.

The landlord testified that the 1 Month Notice was issued as the tenant breached a material term of the tenancy by having too many occupants in the rental unit. The landlord said that warning letters were issued to the tenant on June 13, 2017 and June 24, 2017 advising her to correct the situation. Copies of the correspondence to the tenant and the tenancy agreement were submitted into written evidence.

### Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 47(4) of the *Act* provides that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present application the parties confirmed that the landlord’s 1 Month Notice was served on the tenant personally on June 30, 2017. The tenant filed her application for dispute resolution on July 12, 2017, outside of the 10 days provided by the *Act*. The tenant gave no reason why she did not file her application within the timeframe granted under the *Act*. When asked why she did not file earlier the tenant answered, “I don’t know.” While the advocate alluded to the tenant being limited by disabilities, no evidence was provided of how these disabilities affected the tenant’s ability to file an

application. I am unable to find that there is sufficient evidence to conclude that there were exceptional circumstances to allow an extension of a time limit established by the *Act*. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, July 31, 2017.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

### Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 6, 2017

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Residential Tenancy Branch