



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT, MT, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) seeking:

- to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47 of the Act;
- 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;
- a monetary order for compensation from the landlord for loss or other money owed pursuant to section 67; and
- an order to have the landlord comply with the Act and/or tenancy agreement;

The tenant and the landlords appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the Tenant's Application for Dispute Resolution hearing package ("dispute resolution hearing package"), along with the tenant's evidence, to the landlord's agent personally by hand. The landlord confirmed receipt of the dispute resolution hearing package and the tenant's evidence. Therefore, I find that the landlord has been duly served with the notice of dispute resolution package, and the tenant's evidence, in accordance with section 89 of the Act. The landlord confirmed receipt of the tenant's evidence.

The tenant confirmed receipt of the landlord's evidence.

I note that Section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

#### Preliminary Issue – Scope of Application

I advised the tenant that he has applied for a number of items as part of his application. Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

The Residential Tenancy Branch Rules of Procedure, Rule 2.3 provides me with the discretion to sever unrelated claims:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After reviewing the documentary evidence, the tenant's claim, and hearing from the tenant, I determined that the tenant's claim in relation to cancelling the 1 Month Notice was unrelated to the other issues raised by the tenant. As the 1 Month Notice is the more pressing matter, I dismissed the remainder of the tenant's claim with leave to reapply.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession, pursuant to Section 55 of the Act?

Should the tenant be granted 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?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and /or arguments are reproduced

here. The principal aspects of the tenant's claim and my findings around it are set out below.

Both parties agreed to the following facts. This tenancy began approximately four years ago and is currently ongoing as a month-to-month tenancy. Monthly rent in the amount of \$450.00 is payable on the first day of each month. A security deposit of \$197.50 was paid by the tenant to the landlord.

On December 24, 2018, the landlord served by hand the 1 Month Notice, dated December 24, 2018, to the tenant. The 1 Month Notice indicates an effective vacancy date of January 31, 2019. The tenant confirmed receipt of the 1 Month Notice on December 24, 2018.

The tenant submitted an application for dispute resolution to dispute the 1 Month Notice on January 09, 2019. On the application for dispute resolution, the tenant indicated that he received the 1 Month Notice on December 24, 2018, which confirms the testimony provided by the tenant with respect to the date on which he received the 1 Month Notice.

On the application for dispute resolution, the tenant had selected a box requesting that he be permitted more time to make an application to cancel a notice to end tenancy. The information provided on the application for dispute resolution instructs the applicant that he must provide information to demonstrate why the application is being submitted late. The tenant provided a statement reading "see attached factum."

### Analysis

The tenant provided sworn testimony, along with his declaration on the application for dispute resolution, that he received the 1 Month Notice on December 24, 2018. In accordance with subsection 47(4) of the Act, the tenant must submit an application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on December 24, 2018. The last day on which the tenant would have been able to file his application for dispute resolution for it to be considered on-time was January 03, 2019. The tenant filed his application for dispute resolution on January 09, 2019. Accordingly, the tenant did not file within the ten day limit provided under the Act. Rather, the tenant was late by a period of six days.

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).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
  - a. The extension is agreed to by the landlord;
  - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not 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.

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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

In his written submissions, the tenant provides information generally which describes that he faces problems with depression, anxiety, and insomnia, and that he is on government disability as a result of those issues. The tenant goes on to provide that he has not been doing well emotionally. The tenant also describes having issues with mobility and other physical limitations.

Although I am sympathetic to the issues described by tenant, I find that the tenant did not provide any testimony, submissions, or documentary evidence which specifically speak to the issue of whether the tenant was precluded from applying to dispute the 1 Month Notice within the timelines provided by the Act due to exceptional circumstances which fit within the context of "exceptional circumstances" as outlined in Residential Tenancy Policy Guideline 36.

The tenant has not provided any details to outline whether exceptional circumstances prevented him from submitting his application between the period of December 24, 2018 to January 03, 2019. The tenant has not described whether he made an attempt to file his application within that period, and has not provided any details which depict that he may have faced limitations or exceptional circumstances that hindered his ability to undertake efforts to submit an application between the period of December 24, 2018 to January 03, 2019.

As the tenant has not provided evidence or testimony to substantiate that he was precluded from submitting his application for dispute resolution to dispute the 1 Month Notice due to exceptional circumstances in accordance with section 66 of the Act and Policy Guideline 36, I decline to extend the time limit to apply for arbitration. I therefore dismiss the tenant's application for more time to file to dispute the 1 Month Notice.

Section 47(4) and section 47(5) of the Act state that if a tenant who has received a 1 Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

In this case, the tenant did not dispute the 1 Month Notice within 10 days of receiving it. I find that, pursuant to section 47 of the Act, the tenant's failure to file to dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 31, 2018. As this has not occurred I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the Act and I therefore dismiss the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, without leave to reapply

Section 55 of the Act provides that if a tenant applies to dispute a notice to end tenancy, an Arbitrator is required to issue an Order of Possession if the tenant's application is dismissed, and if the notice complies with section 52 of the Act

Section 52 of the Act outlines the form and content required for a notice to end tenancy issued under the Act. I have reviewed the 1 Month Notice dated December 24, 2018 and find it complies with section 52 of the Act in form and content.

I have dismissed the tenant's application to dispute the 1 Month Notice and found the 1 Month Notice complies with section 52 of the Act. Therefore, pursuant to section 55 of the Act, I issue the landlord an Order of Possession for the rental unit.

Although the effective date of the 1 Month Notice has now passed, the tenant has provided full payment for occupation of the rental unit during the month of February 2019. Therefore, I find that the tenant is entitled to occupy the rental unit until the end of February 2019. Accordingly, the Order of Possession takes effect by 1:00 p.m. on February 28, 2019.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on February 28, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application for more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, without leave to reapply.

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Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective at **1:00 p.m. on February 28, 2019**, which should be served on the tenants. Should the tenants 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: February 19, 2019

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Residential Tenancy Branch