



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LONA ENTERPRISES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and a copy of the 1 month notice dated June 26, 2019 and the attached 3 page details of cause in person on July 13, 2019. The landlord did not submit any documentary evidence. No service issues were made by either party. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

### Preliminary Issue(s)

At the outset, the tenant's application was clarified. The tenant made a second selection of requesting an order for the landlord to comply. The tenant has requested in an amendment to the application for the landlord to stop harassing and taking sides with other occupants. This was further clarified with the assistance of the tenant's support advocate. As a result, the tenant's second selection of requesting an order for the landlord to comply was cancelled by the tenant. The landlord stated that he had no issues and was able to proceed. As such no further action is required for this portion of the application.

The landlord stated that he wished to argue that the tenant had failed to apply for dispute within the allowed 10 Day time frame. The tenant argues that she was not late in filing the application. A review of the tenant's application shows that it was filed on July 10, 2019. Both parties confirmed that the landlord served the tenant with the 1 month notice on June 26, 2019. The tenant did not apply for more time to make an application to dispute the notice to end tenancy. The 10 Day time limitation falls on July 6, 2019. As such, the tenant applied on July 10, 2019, 4 days late. The tenant submitted that she suffers from health issues that include anxiety and post traumatic stress disorder for which she has been diagnosed for many years by her Doctor. The landlord argued that the tenant is a very articulate and organized individual who has been able from the start of her tenancy to effectively communicate with the landlord and others any issues.

Section 66 of the Act sets out the circumstances in which an arbitrator can the 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.

In this case, the tenant argues that she did apply late, but both parties confirmed in their direct testimony that the landlord served the tenant with the 1 month notice dated June 26, 2019 and that the tenant received it on June 26, 2019. A further review of the tenant's application shows that it was submitted on July 10, 2019. The tenant further argued that she suffers from a health condition that prevented her from filing within the allowed time frame. The landlord has disputed this stating that the tenant is a capable and organized individual who has always been able to articulate any issues to the landlord. On this basis, I find that the tenant did file the application late by 4 days. I also find that the tenant failed to provide sufficient evidence that she was unable to file the application within the allowed 10 day time frame due to health issues. Pursuant to section 55 (2 (b) the landlord having served the tenant with the 1 month notice dated June 26, 2019 on the same date, the tenant has not disputed the notice and the time for making that application has expired. The tenant's application is dismissed. I find that the content and form of the 1 month notice is valid. The landlord is granted an order of possession. The merits of the 1 month notice were not addressed. As the effective end of tenancy date has now passed, I order that the landlord's order of possession to be effective 2 days after it is served upon the tenant.

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 3, 2019

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Residential Tenancy Branch