

# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNC, MT, ERP, RP

## Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, more time to apply to set aside the notice and an order that the landlord perform repairs. Both parties participated in the conference call hearing.

The issue of the notice to end tenancy was the most urgent of the issues in the tenant's application and was the only issue addressed in the hearing. I have severed the tenant's application for a monetary order pursuant to Residential Tenancy Branch Rule of Procedure 2.3 and dismiss it with leave to reapply.

## Issue(s) to be Decided

Has the tenant demonstrated that exceptional circumstances prevented him from applying to dispute the notice to end tenancy within 10 days?

## Background and Evidence

The parties agreed that on January 15, 2009 the tenant was served with a 1 month notice to end tenancy for cause. The tenant applied to dispute the notice on January 27, 2009. When asked why he had not disputed the notice within 10 days of having received the notice, the tenant said he was working full time, his son was working full time and he did not understand the law. The tenant's counsel argued that the tenant's difficulties with the English language amounted to exceptional circumstances.

## Analysis

Section 47(5) of the Act provides that a tenant who receives a 1 month notice to end tenancy must dispute the notice within 10 days of the date he receives the notice or he is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the tenant applied to dispute the notice 12 days after having

received it. Section 66(1) of the Act permits me to extend the statutorily prescribed time limit only where exceptional circumstances exist. I find that the tenant has failed to prove that exceptional circumstances prevented him from filing to dispute the notice within the 10-day timeframe. While the tenant has some difficulty with English, he filled out the application for dispute resolution and was able on that application to clearly articulate the remedy he sought. The tenant lives with his adult son, who speaks English fluently, and if he had any difficulty understanding the notice to end tenancy, could have obtained assistance. The notice to end tenancy clearly explains the action the tenant must take and the tenant understood enough of the notice to know that he had to file a dispute at the Residential Tenancy Branch, which information is contained in the same paragraph which advises of the time frame in which he was required to do so. I do not accept that working full-time may be considered an exceptional circumstance. For the above reasons, I find that the tenant's application for dispute resolution must be dismissed as it was not filed within the prescribed timeframe.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

### Conclusion

The tenant's application to set aside the notice to end tenancy is dismissed. The tenant's application for an order that the landlord perform repairs is dismissed as the tenancy will not be continuing. The tenant's application for a monetary order is severed from this application and dismissed with leave to reapply. The landlord is granted an order of possession effective March 31, 2009.

Dated March 10, 2009.