

### Introduction

This hearing was held in response to applications filed by both the tenant and the landlord. The tenant seeks, more time to make an application to cancel a Notice to End Tenancy given for Cause following which the tenant would seek to cancel the Notice to end Tenancy given for Cause. The landlord seeks an Order of Possession based on the Notice to End Tenancy given for Cause and recovery of the filing fee paid for this application.

### Background and Evidence

Agent for the tenant says he does not know why the tenant did not file his application to dispute the Notice served February 1, 2010 within the 10 days allowed under the Act. Agent for the landlord says the tenant came for legal advice and the agent called the Residential Tenancy Branch and was advised he could make an application for more time and the application was filed on March 1, 2010.

The landlord has requested an Order of Possession stating that he is willing to allow the tenant until the end of April to move and he is also willing to waive the filing fee.

### Analysis

The Residential Tenancy Act provides that an arbitrator may extend or modify a time limit established by these Acts only in **exceptional circumstances**.

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 very 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.

### Findings

The evidence is that the Notice was served on February 1, 2010. The tenant did not make application to cancel the Notice until March 1, 2010. No explanation was provided for the delay. I therefore find that tenant has failed to show that extraordinary circumstances existed such that he was unable to file his application seeking to dispute a Notice to End Tenancy within the required time limit.

As I am not allowing the tenant's application to extend the time to make application to cancel the Notice, that Notice remains in effect as though the tenant did not make an

application at all. That is that the tenant having failed to make application to cancel the notice to end tenancy has therefore accepted that this tenancy ended on the date set out in the Notice to End Tenancy that is February 28, 2010.

As that date has now passed, the landlord would be entitled to a two day Order of Possession but the landlord stated at the hearing he would be prepared to wait until the end of April for the order to take effect. I will therefore issue an Order of Possession for April 30, 2010.

As the landlord has agreed to waive the filing fee I will make no award in this regard.