



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes MT CNL MNDC OLC ERP RP PSF RR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to allow more time to make her application, to obtain an Order to cancel a notice to end tenancy for the landlord's use of property, to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to order the Landlord to comply with the Act, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, provide services or facilities required by law, and to allow the Tenant reduced rent for repairs, services, or facilities agreed upon but not provided.

The hearing documents were sent via registered mail by the Tenant to the Landlord. The Landlord confirmed receipt of the hearing package from the Tenant.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Was a Notice to End Tenancy issued and served in accordance with the *Residential Tenancy Act*?
2. If so, has the Tenant made her application to dispute the notice late as the result of extenuating circumstances?

### Background and Evidence

The Tenant testified that she entered into a written tenancy agreement with the Landlord that began on March 15, 2009. Rent is payable on the first of each month in the amount of \$600.00 and the on March 15, 2009 she paid the Landlord a security deposit of \$300.00.

The Landlord testified she issued the Tenant the 2 Month Notice to End Tenancy on March 3, 2011 and she served the Notice from her hand to the Tenant's hand.

The Tenant confirmed receipt of the 2 Month Notice on March 3, 2011. The Tenant stated that she did not make her application to dispute the Notice sooner because she was sick and she did not realize she could appeal the Notice.

When asked what evidence she provided to support she was prevented from making her application for dispute resolution due to her illness, the Tenant stated she was not told she had to provide evidence to prove she was sick.

The Landlord did not have any additional testimony to present.

### Analysis

In the course of this proceeding and upon review of the Tenant's application, I have determined that I will not deal with all the dispute issues the Tenant has placed on her application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request for more time to make her application and to set aside or cancel the Landlord's Notice to End Tenancy for Landlord's use of the property, and I dismiss the balance of the Tenant's claim with leave to reapply.

Section 49 (8) provides that a tenant may dispute a 2 Month Notice to End Tenancy for Landlord's Use by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

In this case the evidence supports the Tenant was served the Notice, in person on March 3, 2011. The Tenant's application to dispute the Notice was not filed until March 29, 2011, 26 days after she received the Notice.

Section 66(1) of the Act states that the Director may extend a time limit established by this Act only in **exceptional circumstances**. The *Residential Tenancy Policy Guideline* # 36 defines exceptional circumstances as follows:

### **Exceptional Circumstances**

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a Dispute Resolution Officer 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

The Tenant's evidence included a hand written statement where she indicates she has been ill. That being said, there is no evidence which supports her illness prevented her from making an application to dispute the Notice.

The evidence supports the Tenant was served the Notice, in accordance with the Act, and page two of that Notice has the following information printed on it:

**INFORMATION FOR TENANTS WHO RECEIVE THIS NOTICE TO END TENANCY**

*You have the right to dispute this Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution Officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.*

Based on the aforementioned, I do not accept the Tenant's testimony that she was not provided information about disputing the notice or provided information about submitting evidence to support her request for more time. Therefore, I find there to be insufficient evidence to meet the burden of proof that there were extenuating circumstances which prevented the Tenant from making her application for dispute resolution within the 15 day requirement and the application is dismissed without leave to reapply.

The 2 Month Notice to End Tenancy for Landlord's Use dated March 3, 2011, is not cancelled and is still in force.

Conclusion

The Tenant's application for more time and to cancel the Notice to End Tenancy for Cause is HEREBY DISMISSED, without leave to reapply.

The Tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to order the Landlord to comply with the Act, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, provide services or facilities required by law, and to allow the Tenant reduced rent for repairs, services, or facilities agreed upon but not provided, is HEREBY DISMISSED, with leave to reapply.

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: April 20, 2011.

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Residential Tenancy Branch