



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

MT, CNL, MNDC, OLC, RP, and FF

### Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Landlord's Use of Property; to allow a tenant more time to apply to cancel a Notice to End Tenancy; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or tenancy agreement; for an Order requiring the Landlord to make repairs to the rental unit; and to recover the cost of filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which are the application to set aside the Notice to End Tenancy and the application to allow a tenant more time to apply to cancel a Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the Tenant's request to set aside the Notice to End Tenancy, for more time to apply to cancel a Notice to End Tenancy, and to recover the filing fee at these proceedings. The balance of the Tenant's Application for Dispute Resolution is dismissed, with leave to re-apply.

The Tenant requested an adjournment for the purposes of gathering evidence to support her Application for Dispute Resolution. The Tenant's request was denied, in part, because I found that it would be unfair to the Landlord to delay proceedings that relate to ending a tenancy. More importantly, the request was denied because the Tenant could not explain what evidence she would submit that would cause me to alter my decision regarding the Notice to End Tenancy or her application for more time to cancel the Notice to End Tenancy.

### Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy should be set aside; whether the Tenant should be granted more time to apply to cancel a Notice to End Tenancy; and whether the Tenant is entitled to recover the cost of filing this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 01, 2008 and that the Tenant is required to pay monthly rent of \$650.00 by the first day of each month.

At the hearing the Landlord and the Tenant agreed that the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on April 15, 2011. In the Tenant's Application for Dispute Resolution the Tenant declared that she received the Notice to End Tenancy on April 21, 2011. A copy of the Notice to End tenancy was not submitted in evidence by either party.

The Tenant applied to set aside the Notice to End Tenancy on May 13, 2011. The Tenant stated that she did not file her Application for Dispute Resolution within fifteen days of receiving the Notice to End tenancy because she did not realize that she had to file the Application for Dispute Resolution within fifteen days.

The Landlord and the Tenant agree that the Notice to End Tenancy has a declared effective date of June 15, 2011.

### Analysis

Section 49(8) of the *Act* stipulates that a tenant has 15 days from the date of receiving a Notice to End Tenancy that has been served pursuant to section 49 of the *Act* to dispute the Notice. I find that the Tenant failed to comply with section 49(8) of the *Act*. Regardless of whether the Tenant received the Notice to End Tenancy that was served pursuant to section 49 of the *Act* on April 21, 2011 or on April 15, 2011, the Tenant did not dispute the Notice to End Tenancy within fifteen days of receiving the Notice to End Tenancy.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the Tenant was hospitalized for an extended period after receiving the Notice. In the circumstances before me, I do not find that being unaware of the legislated time frame is a strong and compelling reason for being unable to dispute the Notice to End Tenancy within fifteen days of receiving the Notice.

On this basis, I dismiss the Tenant's application for more time to apply to set aside the Notice to End Tenancy.

Section 49(8) of the *Act* stipulates that if a tenant does not dispute a Notice to End Tenancy within fifteen days of receiving 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 on that date. As the Notice to End Tenancy was not disputed within fifteen days of receiving it, I find that the Tenant accepted that the tenancy ends on the effective date of the Notice.

Section 49(2) of the *Act* stipulates that a Notice to End Tenancy served pursuant to section 49 of the *Act* must end the tenancy effective on a date that is not earlier than two months after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant received this Notice on April 15, 2011 or April 21, 2011, and rent is due by the first day of each month, the earliest effective date that the Notice is June 30, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is June 30, 2011.

### Conclusion

As the Tenant is conclusively presumed to accept that the tenancy ends on June 30, 2011, I dismiss her application to set aside the Notice to End Tenancy and I find that she must vacate the rental unit by that date.

I find that the Tenant's application has been without merit and I dismiss her application to recover the fee for filing this Application for Dispute Resolution.

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: June 08, 2011.

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Residential Tenancy Branch