



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC

### Introduction

This hearing dealt with an application by the tenants for more time to make an application and to cancel a notice to end tenancy for cause.

Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

### Background and Evidence

This fixed term tenancy began February 14, 2012 with monthly rent of \$1595.00 and the tenants paid a security deposit of \$797.50.

On May 15, 2012 the landlord served the tenant's with a 1 Month Notice to End Tenancy for Cause by posting the notice to the door. The Act dictates that the tenants were therefore served May 18, 2012 and the tenants filed to dispute this notice May 31, 2012.

The tenants have:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.

The tenants testified that they had not been able to dispute the notice to end tenancy within the required 10 day time period due to the fact that when they came in to the Residential Tenancy Branch office they did not have the proper information to file their application. The tenants stated that Residential Tenancy Branch staff advised them that coming back at a later date would be okay and that they would still be able to dispute the notice.

Tenant JM stated that he had just started a new job and that they had to leave the Residential Tenancy Branch and return with their income information to qualify for a fee waiver which delayed the filing of the application. The tenants also stated that as one of

them had been in the hospital, they were of the impression that they both had to be present when filing the application as they are both on the tenancy agreement.

The tenants also stated that the landlord has never provided a warning letter to them as specified in the tenancy agreement regarding the allegations of other tenants being disturbed.

The landlord stated that the owner of the building had contacted the tenants and advised them of the issues however the tenants maintain that the owner simply advised the tenants she needed to talk to them. The landlord stated that the day the notice was served on the tenants that tenant JM made numerous calls to the landlord stating that they would be filing to dispute the notice. Because of this the landlord believes that the tenants were well aware of the process for disputing the notice.

The landlord stated that the tenants have been very disruptive and that because of the threatening, uncomfortable atmosphere the tenants have created, 2 other tenants in the building have vacated and 3<sup>rd</sup> tenant has stated that they will vacate if these tenants do not leave. The landlord stated that they have received numerous emails from tenants in the building regarding how disruptive these tenants are. The landlord stated that they have also since issued a 10 day notice for unpaid rent as the tenants have not paid all of the June 2012 rent.

The landlord stated that they and the owner did discuss having the tenants stay in the tenancy however the owner made the decision that there have just been too many disruptions as a result of this tenancy.

The landlord per section 55 of the Residential Tenancy Act verbally requested an order of possession for the rental unit based on the 1 month notice to end tenancy for cause.

### Analysis

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a tenant must apply for dispute resolution. If the tenant fails to file to dispute the notice, then under section 46(5)(a)(b) of the Act they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

The tenant's in this application have applied for more time to make an application however I do not find that the circumstances which delayed the tenants in making the application IE: incorrect information at time of application, both parties not present', rise to that of 'extenuating circumstances'. Therefore the tenant's request for more time to make an application is dismissed without leave to reapply and the notice remains in full force and effect.

Residential Tenancy Policy Guideline **12 Extending a Time Period** speaks to:

**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.*

The application to dispute the notice was not made within the required time period as specified by the Act therefore the tenancy will end on the effective date of the notice; June 30, 2012.

As the tenancy is coming to an end for the reasons noted above, I have not considered the notice to end tenancy on its merits.

The tenant's application is therefore dismissed without leave to reapply.

Conclusion

**The tenant's application is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end on June 30, 2012 at 1:00 PM.**

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, June 30, 2012**. This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 20, 2012

---

Residential Tenancy Branch