



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to allow her more time to make her application and to have a Notice to end tenancy for cause cancelled.

The parties appeared at the teleconference hearing and gave affirmed testimony. The Tenant requested that her Agent be allowed to speak on her behalf. The Agent confirmed he had firsthand knowledge of the events he would be providing evidence of. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Tenant proven extenuating circumstances to be granted more time to apply to cancel the notice to end tenancy?
2. Should the Landlord be issued an Order of Possession?

### Background and Evidence

The Agent affirmed that the Tenant did not submit evidence in support her of application. He submitted that the Tenant did not receive evidence from the Landlord in response to her application.

I acknowledged receipt of four pages of evidence via fax, however there is no indication of the sender of this evidence. The Landlord could not speak to evidence provided by his head office as he has been out of town in recent weeks and does not have any record of evidence being sent.

The Agent submitted that the Tenant received three pages when she was served with the Notice, the first page is titled "Notice to the Tenant" which explains why she is being evicted, the second page is titled "1 Month Notice To End Tenancy for Cause", (the Notice) dated May 23, 2012; and the third page is the reasons for issuing the 1 Month

Notice (page 2 of the Notice). These documents were posted to the Tenant's door May 23, 2012, and indicate the Tenant was being given 2 months to move out by July 31, 2012.

The Agent argued that the Tenant did not file an application to dispute the Notice because she was served with hearing documents the next day which for another matter relating to the Landlord's application to end the tenancy for unpaid rent so she thought it was all related to her Notice for cause.

At the outset of the hearing the Landlord stated that he was opposed to this hearing proceeding because he served the 1 Month Notice to the Tenant back at the end of May 2012 and her time to dispute the Notice is over. He questioned when his Order of Possession would be effective and then confirmed he was making a request to have an Order of Possession issued for the effective date of the Notice, July 31, 2012.

### Analysis

The Landlord could not provide testimony in relation to evidence submitted by his head office. The Tenant's Agent argued the Tenant did not receive evidence from the Landlord; therefore I find the Landlord's evidence does not meet the requirements of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served or received by the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the applicant Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

When a tenant receives a 1 Month Notice to end tenancy for cause, section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

The Tenant's Agent affirmed the Tenant received the Notice on the morning May 23, 2012. The evidence supports the Tenant did not make application to dispute the Notice until July 10, 2012, 48 days after receipt of the Notice. Accordingly, I find the Tenant did not file her application to dispute the Notice in accordance with Section 47(4).

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the Act but only in **exceptional circumstance** [emphasis added]. The reasons given by the Tenant's Agent on why the Tenant did not apply within the

prescribed timeframes does not constitute exception circumstances and so I find that I cannot accept this application to cancel the Notice to end tenancy.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession effective **July 31, 2012**.

### Conclusion

I HEREBY DECLINE TO ACCEPT the Tenant's application, without leave to reapply.

The Landlord has been issued an Order of Possession effective **July 31, 2012, at 1:00 p.m.** This Order is legally binding and must be served upon the Tenant.

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: July 30, 2012.

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Residential Tenancy Branch