



# 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 the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

While the tenant had applied to cancel a 1 Month Notice to End Tenancy for Cause the notice he received was a 1 Month Notice to End Tenancy for End of Employment. I amend the tenant's Application to reflect the correct Notice.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to submit his Application for Dispute Resolution seeking to cancel a notice to end tenancy and to cancel a 1 Month Notice to End Tenancy for End of Employment, pursuant to Sections 48 and 66 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant acknowledges receipt of the 1 Month Notice to End Tenancy for on December 21, 2012 and that he had attempted to contact the landlord during this time to discuss some options because although he was originally going to move out he has determined that he was not able to financially move.

After not being able to contact the landlord during the Christmas season he states he filed his Application for Dispute Resolution. I note the tenant filed his Application on January 3, 2013, 1 day after the 10 day deadline allowed for in the *Act*.

The landlord testified that the tenant was aware of how to contact the landlord during the Christmas season and that there was no time during the season that the landlord was unavailable.

The tenancy is on a month to month basis for a monthly rent of \$440.00 due on the 1<sup>st</sup> of each month. While the current landlord took possession of the residential property in September 2012 he is relying on records provided by the previous owner that indicate the tenancy began in September 2011 at the same time the tenant became the resident manager.

The tenant submits that his tenancy began in March 2011 and he became resident manager in December 2011. The parties agree the tenant's employment with the landlord ended on December 4, 2012. Neither party provided any documentation to confirm either the start date of the tenancy or the employment.

The parties agree that the tenant received payment for his employment after invoicing the landlord and that he paid his rent on a monthly basis to the landlord.

### Analysis

Section 66 of the *Act* states the director may extend a limit established by the *Act* only in exceptional circumstances. Exceptional means, according to Residential Tenancy Policy Guideline 36, 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 it is required is very strong and compelling.

As the tenant filed his Application only one day after the deadline and due to confusion around deadlines and days that count towards those deadlines during the Christmas season, I grant the tenant the additional day it took to file his Application.

Section 48 of the *Act* allows a landlord to end a tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if:

1. The rental unit was rented or provided to the tenant for the term of his or her employment;
2. The tenant's employment as a caretaker, manager or superintendent is ended; and
3. The landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

In an Application for Dispute Resolution submitted by a tenant to cancel a notice to end tenancy the burden is on the landlord to provide sufficient evidence to establish that he has authority under the *Act* to end the tenancy.

While the landlord submits by verbal testimony that the rental unit was provided to the tenant at the start of his employment the tenant disputes this testimony and states that he been in the rental unit for at 10 months prior to starting employment with the previous landlord.

As the tenant disputes this significant component of whether or not the landlord may end the tenancy as the tenant's employment has ended, it is incumbent on the landlord to provide additional evidence to establish the unit was provided as a part of the employment term.

As the landlord has provided no corroborating evidence or testimony, I find the landlord has failed to establish the unit was provided as a component of the employment term. Therefore, I find the landlord cannot rely upon Section 48 to end the tenancy, based on the evidence provided.

### Conclusion

I order the 1 Month Notice to End Tenancy for End of Employment issued by the landlord on December 21, 2012 to be cancelled and that the tenancy remain in full force and effect.

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: January 30, 2013