



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MT, CNC, OLC

### Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord.

The tenant seeks:

1. More time to make an application to cancel a Notice to End Tenancy given for Cause;
2. To cancel a Notice to End Tenancy given for Cause;
3. To seek an Order that the landlord comply with the Act; and
4. Other.

The landlord seeks:

1. An Order of Possession; and
2. Recovery of the filing fee paid for this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

### Issue(s) to be Decided

Has either party met the burden of proving their claims?

### Background and Evidence

The landlord submits that this tenancy began on November 1, 2012. Rent was fixed at \$900.00 per month and the tenant was supposed to pay a \$450.00 security deposit and a \$250.00 pet deposit but to date she has not paid either deposit. The landlord issued a Notice to End Tenancy for cause when he became aware that the tenant was not occupying the rental unit as agreed. The landlord says that leaving the house unoccupied would void his insurance coverage on the property. The landlord says that based on the tenant not paying the deposits and not taking up occupancy of the rental

unit he issued a Notice to End Tenancy for Cause. In addition, because the tenant did not pay the security and pet deposit or rent due on December 1, 2012 the landlord also issued a 10 day Notice to End Tenancy on December 17, 2012 effective December 27, 2012 which has not been disputed.

Although the landlord posted the Notice to End Tenancy for Cause on November 28, 2012 on the rental unit door, the tenant did not file her application seeking to dispute that Notice until December 13, 2012. The tenant now makes application seeking an extension of time to dispute that Notice. The tenant says she did not make her application within the 10 days as required by the Act because she was living in Vancouver where she was personally loading a 5 ton moving truck in preparation for her move to the rental property on Gabriola Island.

The tenant added that she did not pay her deposits because the landlords told her they may be paid over time. The tenant said as soon as she realized her December rent cheque had gone astray she went to the government agent responsible and had a new cheque issued and this was within a few days.

The landlord maintains that he did not receive rent for December 1, 2012 until January 2, 2013 which was accepted with the issuance of a receipt marked "for use and occupancy only".

### Analysis

As set out in the Notice to End Tenancy the tenant had 10 days within which to dispute the notice or the Act deems that the tenant has accepted the Notice and will vacate the rental unit on the effective date set out in the Notice.

The *Residential Tenancy Act* provides that an arbitrator may extend or modify a time limit established by these Acts only in **exceptional circumstances**.

### **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 require 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

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

In this case the evidence is that the tenant was in Vancouver packing a moving truck. I therefore find that the application to extend the time to file an Application to dispute a Notice to End Tenancy does not meet the criteria set out in the Act that would allow me to extend the time for this application.

I therefore dismiss the applicant's application to extend the time for filing the review.

The landlord has requested an Order of Possession. Having dismissed the tenant's application seeking to extend the time to cancel the Notice to End Tenancy that Notice cannot be disputed and the landlord is therefore entitled to an Order of Possession. That Order shall be issued effective 1 o'clock in the afternoon on January 31, 2013.

With respect to the remainder of the tenant's applications as this tenancy is ending these applications are dismissed.

As both parties filed applications in this matter I decline to award either party recovery of the \$50.00 filing fee they have each paid.

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 15, 2013

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Residential Tenancy Branch

