



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC and FF

### Introduction

This hearing was convened on the tenants' application of January 14, 2013 seeking more time to make this application and to have set aside a Notice to End Tenancy for cause – repeated late payment of rent - served on December 3, 2012.

Section 47(4) of the *Act* permits tenants 10 days from receipt of a Notice to End Tenancy for cause to make application to contest the notice, a time limit that is restated on the notice. In the present matter, the application was made about one month after the time limit to do so had passed.

Section 66 of the *Act* states that the director's delegate may only extend a time limit only in exceptional circumstances. Residential Policy Guideline #36 clarifies such circumstances as follows:

"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."

An example of exceptional circumstance given in the guideline is hospitalization with documentary verification.

In the present matter, the tenants gave explanation that they had believed they could come to an agreement with the landlord to continue the tenancy. I cannot find that to be exceptional to a degree that would warrant an extension of time to apply.

Nevertheless, in view of the extraordinary length of this tenancy and for the record, I have canvassed the circumstances leading to the notice to end the tenancy.

### Issue(s) to be Decided

Would circumstances warrant setting the Notice to End Tenancy aside?

### Background and Evidence

This tenancy began on October 1, 1989. Rent is \$1,216 per month and the landlord holds a security deposit of \$375 paid on September 24, 1989.

The landlord submitted into evidence copies of three 10-day Notices to End Tenancy for unpaid rent dated March 13, 2012, October 9, 2012 and December 3, 2012, the last of which was also accompanied by the one-month notice for repeated late payment.

With each of the first two notices, the landlord wrote to the tenants advising that rent must be paid on time if the tenancy was to continue, and the second letter cautioned that three late payments within a year constitutes cause to end the tenancy and a further late payment would result in the present notice.

### Analysis

I find that the Notice to End Tenancy for repeated late payment of rent dated December 3, 2012 was lawful and valid, and even if the application were to be allowed, the notice could not have been set aside on its merits. The tenants' application was dismissed without leave to reapply.

On hearing that determination, the landlord requested an Order of Possession under section 55(1) of the *Act* which compels the issuance of the order on the landlord's request when an application to set aside a notice to end tenancy is dismissed.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on March 31, 2013.

### Conclusion

The tenants' application is dismissed as out of time without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on March 31, 2013.

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: February 05, 2013

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Residential Tenancy Branch

