



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MT, CNC

### Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

May the tenant be allowed more time to cancel a 1 Month Notice to End Tenancy for Cause issued January 29, 2013?

If allowed more time should the 1 Month Notice be cancelled?

### Background and Evidence

The tenancy commenced on October 1, 2004.

The landlord and the tenant agreed that a 1 Month Notice to End Tenancy for Cause was given to the tenant on January 31, 2013.

The tenant applied to cancel the Notice on February 14, 2013.

The tenant could not provide a reason why he delayed his application and agreed that he was a little slow in submitting the application to dispute the Notice. The tenant stated that within a day or two of receiving the Notice he had read the Notice.

The tenant could not say why he did not dispute the Notice within 10 days; other than having a poor memory he could not say exactly why he did not apply to cancel the Notice. The tenant explained that he is elderly and that he did read the Notice, but he

could not recall if he took any steps to apply to cancel the Notice within the required time of 10 days.

The tenant said he was not blaming his age. At one point someone had suggested the tenant see an advocate, who then ensured the application was submitted.

The advocate was asked if there was any information that I should be aware of; she commented that the tenant does not appear to recall anything she tells him from 1 day to the next and that the application to dispute the Notice just did not happen.

The landlord stated that problems have been reoccurring with the tenancy and that they wish to have the tenancy end and to obtain possession of the unit.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I could not find any reason to allow the tenant more time to apply to cancel the Notice ending tenancy. Therefore, I find that the tenant's application is dismissed.

The tenant described memory problems, but he did not supply any evidence that he suffers from a condition that would have barred him from reading the Notice and then understanding the need to apply to cancel the Notice. The 2<sup>nd</sup> page of the Notice provides tenants with information on the need to dispute a Notice and the time within which an application must be made and the possible consequences should the application be made late.

It appears that the tenant, after reading the Notice and seeing that he must apply disputing within 10 days, chose to delay any action until he happened to mention the Notice to another individual.

In the absence of any information that the tenant had a serious and compelling reason to delay his application, I find that the application was made late and that the tenant is denied an extension of time to make his application. I was compelled by the tenant's submission that his memory is poor; however, the tenant did not suggest that his age played a role in the delayed application, nor did he offer any medical evidence that he suffers from a condition that would render him incapable of understanding the need to submit his application.

Section 55(1) of the Act provides:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

*(a) the landlord makes an oral request for an order of possession, and  
(b) the director dismisses the tenant's application or upholds the landlord's notice.*

Therefore, as the landlord wishes to have possession of the unit and the tenant's application is dismissed; I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

### Conclusion

The tenant's application is dismissed.

The landlord is entitled to an Order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 09, 2013

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Residential Tenancy Branch

