



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Atira Womans Resource Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNQ

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to cancel a notice to end tenancy and to cancel the notice to end tenancy as the tenant does not qualify for subsidized rental unit.

The tenant's agent and three agents for the landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to more time to cancel the notice to end tenancy?
- If so should the two month notice to end tenancy be cancelled?

### Background and Evidence

The parties agree that this tenancy started on July 01, 2011. This is a subsidized two bedroom unit in which the tenant currently lives in alone.

The landlord's agent testifies that the tenant was served with a two month notice to end tenancy as the tenant does not qualify for a subsidized rental unit. This notice was served upon the tenant in person on February 24, 2013. The notice informs the tenant that the

tenant no longer qualifies for the rental unit and notifies the tenant that the tenant must file an application to cancel the notice within 15 days. The tenant did not file to cancel the notice until March 14, 2013.

The landlord's agent testifies that the rental unit is for a parent and child over 18 months and the tenant has been living in the unit alone and therefore does not qualify for this subsidized unit. The landlord's agent testifies that they have offered to re-house the tenant in a bachelor unit. The landlord's agent requests that the notice to end tenancy is upheld and the landlord seeks an order of possession effective on May 01, 2013.

The landlord's agent LT states that as the tenant is presently in hospital having a baby, if the tenant comes home and the baby lives with the tenant full time then the landlord will not enforce the order of possession and will allow the tenant to continue to reside in the two bedroom rental unit. If the tenant does not come home with the baby or the baby does not live full time with the tenant then the landlord will still offer the tenant a bachelor unit in the building.

The tenant's agent, who is the tenants outreach worker, testifies that the tenant has some health issues with the pregnancy and anxiety and was not able to file the application within the 15 days. The tenant's agent testifies that the tenant is in hospital and is having an induced birth tomorrow. The tenant's agent testifies that it is likely that the tenant will be able to take the baby home and will live with the baby full time. The tenants agent has provided supporting letters in evidence one from the landlords agent concerning the tenants good standing as a tenant, a letter from a social worker in support of the tenants request to remain in her home and that the tenant would like to parent this child and is fighting for custody of her other child; and a psychiatry progress report recommending that the tenant stay in her current unit.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties; I refer the parties to s. 66 of the *Act* which speaks to Director's orders: changing time limits, and provides in part as follows:

66(1) The director may extend a time limit established by this *Act* only in exceptional circumstances, other than as provided by section 59(3) [*starting proceedings*] or 81(4) [*decision on application for review*].

Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a dispute resolution officer 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. 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.

I find that the reasons provided by the tenant's agent for the late filing of the tenants application, do not meet the exceptional circumstances required by section 66 of the *Act* to extend a time limit.

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

Consequently I find the tenant has not met the criteria for exceptional circumstances and I must dismiss the tenant's application for more time to file to cancel the notice to end tenancy.

In any event it has been determined that the tenant does not qualify at this time for the subsidized rental unit and I therefore uphold the two month notice to end tenancy and grant the landlords oral request made at the hearing for an order of possession.

However, let it be noted here that the landlords agent has agreed to allow the tenant to remain in the tenant's current rental unit if the tenant returns home with her baby and the baby lives with the tenant full time. If this event happens then the landlord's agent agrees not to enforce the order of possession. If the tenant does not return home with the baby then the landlord will continue to offer the tenant a bachelor unit in the building. If the tenant refuses this offer then the tenant must move from the rental unit on May 01, 2013.

#### Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on May 01, 2013. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: April 10, 2013

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Residential Tenancy Branch