



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, ERP, RP, PSF, MT

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), an order requiring the landlord to make repairs and emergency repairs to the rental unit, an order requiring the landlord to provide services or facilities required by law, and for an order granting more time to make an application to cancel a notice to end tenancy.

The parties and the tenant's advocate appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me as to the portion of the tenant's application seeking additional time to file an application for dispute resolution.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary issue*-I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the *Residential Tenancy Act* (the "Act") are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application seeking cancellation of a Notice to End Tenancy for Cause and for an extension of time to file an application for dispute resolution in dispute of the Notice.

Issue(s) to be Decided

Is the tenant entitled to an extension of time to apply to cancel the notice to end tenancy for cause?

If so, is the tenant entitled to an order cancelling the Notice?

Background and Evidence

I heard undisputed evidence that this tenancy began in September 2002, that current monthly rent is \$1095, and that the tenant paid a security deposit of \$497.50.

I also heard undisputed evidence from the parties that the landlord served the tenant with a 1 Month Notice on July 17, 2013, by leaving it with the tenant on July 17, 2013, listing a move out date of September 30, 2013.

The Notice informed the tenant that she had 10 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenant is presume to have accepted that the tenancy is ending and must move out of the rental unit by the effective move out date listed on the Notice.

In this case, the tenant had until July 27, 2013, to make her application to dispute the Notice; however, the tenant did not apply to dispute the Notice until August 29, 2013.

In support of her request for an extension of time to file her application, the tenant and her advocate submitted that the tenant's recent foot surgery, with the resulting pain and medication, prevented her filing her application.

The tenant and her advocate further explained that although the surgery occurred on June 5, 2013, the operation was not successful, leading to complications throughout the summer. The tenant submitted that she was in constant pain and immobile during the period following receipt of the Notice.

In response to my question, the tenant's advocate submitted that although he was not dealing with the tenant at that time, the tenant had 4-5 other people assisting her.

In response to my question, the tenant stated that she was not aware that anyone else could file an application on her behalf.

In the hearing the landlord did not orally request an order of possession, although given the opportunity.

### Analysis

I have reviewed the relevant evidence, including the tenant's doctor's notes, dated in September 2013.

Under section 66(1) of the *Residential Tenancy Act*, an extension of time can only be granted where the applicant, the tenant in this case, has established that there are exceptional circumstances.

Residential Tenancy Branch Policy Guideline #36 offers examples of exceptional circumstances, such as if the party was in the hospital at all times. I do not find that to be the case here.

Instances where a party was not feeling well or did not understand the legislation are not exceptional circumstances.

In the case before me, I find that the tenant has failed to prove that exceptional circumstances prevented her from filing her application within 10 days of having been served with the Notice, and I therefore deny her application for an extension of time.

I also find the tenant's doctor's notes to be unpersuasive due to their lack of specificity as to the exact nature of the condition of the tenant's condition, which would prevent her from filing an application.

The tenant's application to cancel the Notice dated and issued July 17, 2013, is therefore dismissed, and she is therefore conclusively presumed to have accepted that the tenancy ended on September 30, 2013, the effective date of the notice to end tenancy for cause.

Conclusion

The tenant's application for an extension of time to file an application for dispute resolution to dispute a notice and for an order cancelling a Notice to end tenancy is dismissed.

The portion of the tenant's application seeking orders for the landlord is dismissed, with leave to reapply.

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: October 09, 2013

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Residential Tenancy Branch

