



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Chilliwack Kiwanis Housing Society  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes: OPC, OPB, FF  
MT, CNC, PSF, FF

### Introduction

This hearing concerns 2 applications: i) by the landlord for an order of possession / and recovery of the filing fee; and ii) by the tenant for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / an order instructing the landlord to provide services or facilities required by law / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began August 1, 2008. Monthly rent of \$417.00 is due and payable in advance on the first day of each month, and a security deposit of \$430.00 was collected.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated October 24, 2013. The notice was served by way of the tenant's mail slot on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is November 30, 2013. There are five (5) different reasons identified on the notice in support of its issuance. The tenant filed an application to dispute the notice on November 12, 2013.

## Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 47(4) of the Act provides that a tenant may dispute a 1 month notice by filing an application for dispute resolution within 10 days of receiving it. As the tenant was served by way of her mail slot on October 24, 2013, pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, the tenant is deemed to have received the notice on October 27, 2013. The 10<sup>th</sup> and final day available to the tenant to file an application to dispute the notice was November 6, 2013. As the tenant's application was filed outside of the statutory 10 day period on November 12, 2013, the tenant has applied for more time to make an application to cancel the notice.

The tenant testified that as she was very busy, she did not check her mail box in time to dispute the notice within the 10 day period available.

Section 66 of the Act 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]*.

Further, Residential Tenancy Policy Guideline # 36 addresses "Extending a Time Period," and provides in part:

### **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 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.

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

I find that the tenant’s reason for not filing an application to dispute the 1 month notice in a timely manner is not “exceptional.” Accordingly, the tenant’s application for more time to make an application to cancel a notice to end tenancy is dismissed. Following from all the above, the tenant’s application for cancellation of the 1 month notice is also dismissed, and I find that the landlord has established entitlement to an order of possession. During the hearing the landlord’s agent requested that the order of possession be made effective January 31, 2014.

As the landlord has succeeded in obtaining an order of possession, I find that the landlord has established entitlement to recovery of the \$50.00 filing fee. Accordingly, I order that the landlord may withhold this amount from the tenant’s security deposit at the end of tenancy.

The tenant had no explanation for applying for an order instructing the landlord to provide services or facilities required by law. Accordingly, that aspect of the tenant’s application is dismissed.

As the tenant has not succeeded with the main aspects of her application, her application to recover the filing fee is also dismissed.

As the end of tenancy nears, the attention of the parties is drawn to the following sections of the Act:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 38: **Return of security deposit and pet damage deposit**

Conclusion

The tenant's application is hereby dismissed in its entirety.

I hereby issue an **order of possession** in favour of the landlord effective not later than **1:00 p.m., Friday, January 31, 2014**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I hereby order that the landlord may recover the filing fee by way of withholding **\$50.00** from the tenant's security deposit at the end of tenancy.

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 02, 2014

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Residential Tenancy Branch

