



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Aquilini Properties LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC, ERP, RP

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for more time to file an application to cancel a Notice to End Tenancy, to cancel a One Month Notice to End Tenancy for cause, for an Order for the landlord to make emergency repairs and for an Order for the landlord to make repairs.

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

### Preliminary Issues

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that not all the claims on the tenants' application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenants' application for more time to cancel the Notice to End Tenancy and to cancel the One Month Notice to End Tenancy for cause and I will not deal with the remaining sections of the tenants' claim at this hearing.

Issue(s) to be Decided

Are the tenants entitled to more time to cancel the Notice to End Tenancy?

Are the tenants entitled to have the One Month Notice cancelled?

Background and Evidence

The parties agree that this tenancy started on July 13, 2013 for a month to month tenancy. Rent for this unit is \$825.00 per month and is due on the 1<sup>st</sup> day of each month.

The landlord SR testified that the tenants were served a One Month Notice to End Tenancy on October 02, 2013. This Notice was served in person on that date. The reason given on the Notice is that the tenants are repeatedly late paying rent. The Notice informs the tenants that they have 10 days to file an application for Dispute Resolution to cancel the Notice or they are conclusively presumed to accept the end of the tenancy and must vacate by the effective date of the Notice which is November 01, 2013.

The landlord SR testifies that the tenants have been late with rent in August and September, 2013. No rent has been paid for October, November, 2013 or January, 2014. The landlord DG orally requests an Order of Possession for January 31, 2014.

The tenant testifies that he did not dispute the notice because the landlord drew up an agreement for the tenant to pay \$500.00 on November 08, 2013 and \$325.00 on November 22, 2013. The tenant testifies when he went to pay the rent on these dates the landlord was not available until later at night on November 08, 2013 and refused to take the rent at that time. The tenant testifies that the landlord also refused to accept the second payment of rent.

The landlord SR testifies that he only accepts rent during business hours and there is a mail slot for tenants to post their rent at the office with instructions on how to do so. The tenant turned up at the landlords home at 10.45 p.m. to pay some rent and was told it could not be accepted at that time but should be posted.

### Analysis

The landlord served the tenants with a One Month Notice to End Tenancy on October 02, 2013 in person. Therefore the tenants had 10 days from that date to file their application to dispute the One Month Notice. The tenants filed their application on November 29, 2013.

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 66(1) of the *Residential Tenancy Act* states:

**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].*

The 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 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.

Consequently, I find that the reasons provided by the tenant for the late filing of their application, do not meet the exceptional circumstances required by section 66(1) of the *Act* to extend a time limit. As the tenants have been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice to End Tenancy I must dismiss the tenants' application to set aside the One Month Notice to End Tenancy for cause.

Even if the parties had agreed on dates for the tenant to make rent payments the tenants should have still filed an application to cancel the One Month Notice within 10 days and should have made the rent payments as agreed by posting them in the mail slot provided if the office was closed.

Furthermore even if the tenants had applied within the 10 day time frame the landlord undisputed testimony shows that the tenants have been late on at least three occasions with their rent and therefore the Notice to End Tenancy would have been upheld.

As the landlord has requested an Order of Possession at this hearing I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)*:

**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.*

On the basis of this, I uphold the One Month Notice to End Tenancy for cause and grant the landlord an Order of Possession effective on the date requested by the landlord of January 31, 2014.

#### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause will remain in force and effect.

The remainder of the tenants' application will be dismissed without leave to reapply as this tenancy will end on January 31, 2014.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **January 31, 2014**. This order must be served on the tenants 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: January 22, 2014

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Residential Tenancy Branch

