



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MT, CNQ / CNC, MNSD, FF  
OP

### Introduction

This hearing was scheduled in response to the tenant's application for more time to make an application to cancel notices to end tenancy / cancellation of 2 separate notices to end tenancy / return of all or part of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that an order of possession is sought in the event the tenant's application does not succeed.

### 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 the tenancy began on June 1, 2007. Monthly rent is due and payable in advance on the first day of each month. Currently, the tenant's portion of monthly rent is \$842.00. A security deposit of \$300.00 was collected.

Pursuant to section 49.1 of the Act which speaks to **Landlord's notice: tenant ceases to qualify for rental unit**, the landlord issued a 2 month notice to end tenancy dated December 06, 2013. The notice was served by way of enclosure with a letter dated December 06, 2013 and sent by regular mail on that same date. A copy of the notice and letter were submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 28, 2014. The reason identified on the notice in support of its issuance is as follows:

The tenant no longer qualifies for the subsidized rental unit.

In her application the tenant claims to have received the notice on December 26, 2013. She testified that she does not regularly check her mail as it is often limited to miscellaneous bills and advertisements.

As the notice was sent by regular mail on December 06, 2013, section 90 of the Act, which speaks to **When documents are considered to have been received**, provides that it was deemed to be have been received 5 days later on December 11, 2013. The Act provides that the tenant had 15 days after receiving the notice to file an application to dispute it. In view of statutory holidays in December 2013, in the circumstances of this dispute the 15<sup>th</sup> day is December 27, 2013. However, the tenant filed her application to dispute the notice 11 days beyond the 15<sup>th</sup> day on January 07, 2014.

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord also issued a 1 month notice to end tenancy dated December 06, 2013. The notice was served by the same means set out above for service of the 2 month notice. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 28, 2014. The reasons shown on the notice in support of its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

put the landlord's property at significant risk

Tenant has caused extraordinary damage to the unit/site or property/park

The Act provides that the tenant had 10 days after receiving the notice to file an application to dispute it. Once again, in her application the tenant claims to have received the notice on December 26, 2013. Pursuant to the legislation, as above, the notice would be deemed to have been received on December 11, 2013, and the 10<sup>th</sup> and final day available for filing an application to dispute it would be December 23, 2013. The tenant filed her application to dispute the notice 15 days beyond the 10<sup>th</sup> day on January 07, 2014.

As to reasons for the late filing of her application for dispute resolution in the case of both of the above notices, the tenant claims that she was generally very busy, and that it was difficult to find someone to assist her in pursuing her option to dispute them.

The tenant withdrew from the telephone conference call hearing at approximately 1:50 p.m. without notice, prior to its formal conclusion at approximately 1:52 p.m.

### 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)

Based on the documentary evidence and testimony, I find that the tenant's application to dispute both the 2 month notice and the 1 month notice to end tenancy were filed outside the respective 15 and 10 day statutory time limit(s) available.

Section 66 of the Act speaks to **Director's orders: changing time limits**, and Residential Tenancy Policy Guideline # 36 addresses "Extending a Time Period." Based on the documentary evidence and testimony I find that there were no "exceptional circumstances" giving rise to the tenant's late applications. Accordingly, the tenant's application for more time to make an application to cancel the notices to end tenancy is hereby dismissed, as is the application for cancellation of the notices themselves, and recovery of the filing fee.

Section 55 of the Act addresses **Order of possession** for the landlord, in part:

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.

Following from all of the above, and in view of the landlord's oral request during the hearing, I find that the landlord has established entitlement to an **order of possession**.

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

Section 35: **Condition inspection: end of tenancy**

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 with the exception of her application for return of return of all or part of the security deposit, which is dismissed with leave to reapply.

I hereby issue an **order of possession** in favour of the landlord effective after service on the tenant and by not later than **Friday, February 28, 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.

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: February 20, 2014

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Residential Tenancy Branch

