



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      MT, CNC

### Introduction

This review hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and request for more time to file the Application.

The original hearing was held by way of a teleconference call on January 29, 2014 and since the tenants did not appear at that hearing the tenant's application was dismissed and the landlord's oral request for an Order of Possession was granted. The Order of Possession issued on that date is effective two (2) days after service.

The tenants requested a review hearing on the basis the tenants were unable to connect to the teleconference call. The review hearing was granted. The Order of Possession issued on January 29, 2014 was suspended pending the outcome of this review hearing.

Both parties appeared or were represented at the review hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### **Preliminary Issue – more time to dispute Notice to End Tenancy**

A tenant in receipt of a 1 Month Notice to End Tenancy for Cause has 10 days to file an Application for Dispute Resolution to dispute the Notice; however, the Act provides that an extension of time may be granted in "exceptional circumstances".

The tenants confirmed receiving both pages of the subject 1 Month Notice on December 10, 2013. The tenants filed their Application for Dispute Resolution to dispute the Notice on January 2, 2014.

The tenants explained that they did not file their Application for Dispute Resolution within 10 days of receiving the 1 Month Notice due to the following circumstances:

1. They were unaware of the 10 day time limit;
2. The tenants were out of town visiting people after they received the Notice.
3. The male tenant had several doctor appointments and visits to the hospital in December 2013 although he was uncertain as to the dates of these appointments or visits and did not supply documentation to corroborate this position.
4. The male tenant's mother had been ill.
5. The month of December 2013 was very stressful and confusing for the tenants.

I noted that the tenants included in their written submissions a copy of a 4 page type-written letter dated December 19, 2013 that they confirmed they wrote and mailed to the landlord's employer.

I found the tenants provided insufficient evidence that exceptional circumstances prevented them from filing an Application for Dispute Resolution within 10 days of receiving the 1 Month Notice especially considering they found the time and had the capacity to create a lengthy document that they sent to the landlord's employer on December 19, 2013. Therefore, I deny the tenants request for more time to file dispute and I dismiss the tenant's application.

#### Issue(s) to be Decided

Should the Order of Possession issued on January 29, 2014 be confirmed, varied or set aside?

#### Background and Evidence

It was undisputed that the tenants have paid rent while awaiting this review hearing, including the month of April 2014. During the hearing the landlord stated that he was willing to refund a portion of April's rent if the tenants moved out before the end of April 2014 or he would be willing to permit the tenants occupancy of the rental unit until April 30, 2014 and accept an Order of Possession reflecting that date.

The tenants indicated an effective date of April 30, 2014 was preferable to enforcement of the Order of Possession already issued to the landlord on January 29, 2014.

### Analysis

Since the tenants failed to file to dispute the 1 Month Notice within the time limit for doing so and their request for more time was denied, the tenants' request to cancel the 1 Month Notice has been dismissed. As such, I find the tenancy has ended pursuant to the 1 Month Notice issued on December 10, 2013.

I accept that rent was paid, including the month of April 2014, while the parties were awaiting this review hearing and the enforceability of the 1 Month Notice. Therefore, I am satisfied the parties did not agree to reinstate the tenancy.

Based upon the landlord's willingness to give the tenants occupancy until the end of April 2014 and the tenants' preference for more time to move out, I cancel the Order of Possession issued on January 29, 2014 and I replace it with an Order of Possession that has an effective date of April 30, 2014.

To enforce the Order of Possession issued to the landlord with this decision, it must be served upon the tenants.

### Conclusion

The tenant's application has been dismissed and the tenancy has ended; however, the tenants shall be permitted occupancy of the rental unit until April 30, 2014. The Order of Possession issued January 29, 2014 has been cancelled and replaced with the Order of Possession that is effective April 30, 2014.

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 02, 2014

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Residential Tenancy Branch

