



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MT CNC

### Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to allow the tenant more time to make an application to cancel a Notice to End Tenancy. During the hearing the landlords confirmed that they understood that the tenant was also applying to cancel a 1 Month Notice to End a Tenancy for Cause (the “1 Month Notice”). In the interests of fairness, I amended the tenant’s application pursuant to section 64(3) of the *Act*, to include that the tenant applied to cancel the 1 Month Notice submitted in evidence dated June 26, 2014.

The tenant and the landlords attended the hearing. The hearing process was explained to the parties, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The parties confirmed that they received documentary evidence from the other party and had an opportunity to review that evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

### Preliminary and Procedural Matter

Approximately twenty minutes into the hearing, when the tenant was advised that her application was being dismissed based on conclusive presumption under section 47 of the *Act*, the tenant stated that she was going to “hang up” from the teleconference hearing. The tenant was directed not to disconnect from the hearing as the parties were in the process of discussing a potential for a mutual settled agreement to have the order of possession date possibly extended. Contrary to my direction, the tenant did disconnect from the hearing at approximately twenty-one minutes into the hearing and did not return to the teleconference hearing.

As the tenant purposely disconnected from the teleconference hearing, the hearing proceeded without the tenant. The landlords confirmed their oral request for a two-day order of possession once the tenant disconnected from the hearing, which was after the tenant's application to cancel the 1 Month Notice had been dismissed during the hearing. The total length of the hearing was thirty-eight minutes.

### Issues to be Decided

- Has the tenant provided sufficient evidence to support an extension of time to make an application to cancel a notice to end tenancy?
- Should the 1 Month Notice be cancelled?

### Background and Evidence

A copy of the written tenancy agreement was submitted in evidence. A periodic, month to month tenancy agreement began on December 1, 2013. Monthly rent in the amount of \$800.00 is due on the first day of each month. The tenant paid a security deposit of \$400.00 at the start of the tenancy. The tenant continues to occupy the rental unit.

The tenant confirmed receiving the 1 Month Notice dated June 26, 2014 on June 26, 2014. The effective vacancy date listed on the 1 Month Notice is July 31, 2014. The tenant applied to dispute the 1 Month Notice on July 8, 2014. The tenant stated that her reason for wanting an extension of time to make an application to cancel the 1 Month Notice is that she did not know she could dispute the 1 Month Notice. The tenant confirmed that she had received both pages of the 1 Month Notice and had read the five causes alleged by the landlords on page two of the 1 Month Notice.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Tenant's request for extension of time to make an application to cancel a Notice to End a Tenancy** –The tenant confirmed that she received the 1 Month Notice dated June 26, 2014 on June 26, 2014 and had read page two of the 1 Month Notice which lists the five causes alleged by the landlords. The 1 Month Notice clearly indicates on page two of the 1 Month Notice, "You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch." As the tenant received the 1 Month Notice on June 26, 2014, the tenth day would be Sunday, July 6, 2014. Therefore, the tenant would have until the

next business day, Monday July 7, 2014 to file an Application. The tenant did not file an Application until Tuesday July 8, 2014.

Section 66 of the *Act* applies and states that a time limit may be extended for exceptional circumstances and Residential Tenancy Branch Policy Guideline #36 – Extending a Time Period, indicates that a party not knowing the applicable law or procedure is not a considered “exceptional” circumstances to justify an extension of time to make an application to cancel a Notice to End a Tenancy. Based on the above, **I dismiss** the tenant’s request for an extension of time to make an application to cancel a Notice to End Tenancy due to insufficient evidence.

**Tenant’s request to cancel 1 Month Notice** – Further to the above, and as the tenant failed to submit an Application within 10 days of being served the 1 Month Notice dated June 26, 2014 on June 26, 2014, and in accordance with section 47(5) of the *Act*, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on July 31, 2014, the effective vacancy date on the 1 Month Notice. Therefore, **I dismiss** the tenant’s application in full as the tenant did not apply to dispute the 1 Month Notice within the permitted 10 day timeline under the *Act*.

I do not find it necessary to consider the five causes listed in the 1 Month Notice as a result. The landlords made an oral request for an order of possession during the hearing. The landlords requested a two-day order of possession as the tenant remains in the rental unit and has failed to pay rent for September 2014.

Section 55 of the *Act* applies and states:

**Order of possession for the landlord**

**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.**

**[my emphasis added]**

Given the above and taking into account the landlords' oral request for an order of possession during the hearing, **I find** that the landlords are entitled to an order of possession effective **two (2) days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that court.

### Conclusion

The tenant's application has been dismissed without leave to reapply.

The landlords have been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 10, 2014

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Residential Tenancy Branch

