



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MT, CNC, FF / OPC

### Introduction

This hearing was scheduled in response to the tenant's application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / and recovery of the filing fee. Both parties attended and gave affirmed testimony. During the hearing the landlord confirmed that she seeks an order of possession in the event the tenant's application does not succeed.

### Issue(s) to be Decided

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

### Background and Evidence

There is no written tenancy agreement in evidence for the tenancy which began on December 01, 2013. Monthly rent of \$1,300.00 is due and payable in advance on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$200.00 were both 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 September 01, 2014. The notice was personally served 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 October 01, 2014, and the reason identified in support of its issuance is as follows:

Tenant is repeatedly late paying rent

The landlord testified that rent has been paid late for the following 7 months: March, May, June, July, August, September and October 2014.

Pursuant to section 47(4) of the Act the tenant had 10 days to dispute the notice by filing an application for dispute resolution after receiving it in-person on September 01,

2014. The 10<sup>th</sup> day was September 11, however, the tenant filed his application on September 12, 2014. As to why his application was filed late, the tenant explained that his first attempt to file was made in a timely manner, but sent in error to a federal government office. The tenant claims his disabled / blind status contributed to this error.

### Analysis

Section 66 of the Act addresses **Director's orders: changing time limits**, in part:

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]*.

Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period," 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.

Based on the documentary evidence and testimony of the parties, I find there is insufficient evidence that the tenant's stated reasons for the late filing of his application meet the test of "exceptional." Accordingly, the tenant's application for more time to make an application to cancel a notice to end tenancy is hereby dismissed.

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, I find that the landlord has established entitlement to an order of possession.

As the tenant has not succeeded with the main aspects of his application, I find that his application to recover the filing fee must also be dismissed.

Even if I had found that the tenant's application had been filed in a timely manner, I also find that the tenant had been late in his full payment of rent on at least 7 occasions during 2014. In this regard, section 47(1)(b) provides that a notice to end tenancy for cause can be issued on the basis that "the tenant is repeatedly late paying rent." Further, Residential Tenancy Policy Guideline # 38 speaks to "Repeated Late Payment of Rent," and provides in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

### 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 **November 30, 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: November 04, 2014

---

Residential Tenancy Branch

