



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SCHOENNE HOMES and WALCO DEVELOPMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPL, CNL, MT

### **Introduction**

This hearing dealt with applications by the landlord and the tenant pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for landlord's use of property. The tenant applied to cancel the notice to end tenancy, for additional time to do so and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant made his application to dispute the notice to end tenancy on December 24, 2015. The file was not before me and both parties failed to inform me that the tenant had made an application to dispute the notice to end tenancy.

### **Issues to be decided**

Is the landlord entitled to an order of possession? Did the tenant make an application within the legislated time frame? Is the tenant entitled to additional time to make the application?

### **Background and Evidence**

The tenancy started in 2012. The current monthly rent is \$900.00 payable on the first of each month.

The landlord testified that on December 01, 2015 the landlord served the tenant with a notice to end tenancy for landlord's use of property, to be effective on January 31, 2016. The tenant stated in his written submission that he discussed the notice with the landlord on that day and the landlord agreed to allow him three months instead of two months to end the tenancy. As per their discussion the parties agreed to end the tenancy on February 29, 2016.

The tenant stated that two days after the discussion on December 01, the tenant found out that he was scheduled on January 15, 2016, for a long awaited hip surgery. The tenant testified that on December 22, 2015, the landlord informed him that he needed to move out by the effective date of the notice which was January 31, 2016, instead of the date of February 29, 2016 that was agreed upon on during a discussion on December 01, 2015. The tenant made application to dispute the notice on December 24, 2015.

In his written submission, the tenant has not provided any explanation for the reason he was unable to make an application to dispute the notice to end tenancy within the legislated 15 day time frame. During the hearing, he testified that based on trust he thought he had up to February 29, 2016 to move out and only found out on December 22, 2015, that the landlord had changed his mind and now needed him to move out on January 31, 2016.

I explained during the hearing that because rent is due on the first of the month, by giving a notice on December 01, 2015, the earliest the tenancy could end was February 29, 2016. The tenant made a request for the tenancy to end on March 31, 2016 and the landlord denied the request.

### **Analysis**

Based on the sworn testimony and documentary evidence of both parties, I find that the tenant received the notice to end tenancy, on December 01, 2015. The notice was served in the two page format which clearly notifies the tenant about the 15 day time frame within which to dispute the notice. Since the tenant is deemed to have received the notice on December 01, 2015, and applied to dispute the notice on December 24, 2015, I find that the tenant has not made application to dispute the notice within the legislated time frame.

The tenant has applied for additional time to make the application. Under section 66(1) of the Act, an extension of time can ***only*** be granted where the applicant has established that there are ***exceptional circumstances*** (Sec. 66).

In this matter, the word ***exceptional*** implies that the reason(s) for failing to make application to dispute the notice to end tenancy in the time required are very strong and compelling. On reflection of the reasons of misplaced trust, advanced by the tenant, I find that the tenant has failed to prove that ***exceptional circumstances*** prevented him from filing to dispute the notice to end tenancy within the legislated time limit and accordingly I dismiss his application for additional time to dispute the notice to end tenancy.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Section 53 of the *Residential Tenancy Act* addresses the automatic changing of incorrect effective dates. Section 53(3)(a) states that if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement that complies with the required notice period.

In this case the landlord served the notice to end tenancy on December 01, 2015. Since rent is due on the first of the month, the effective date of the end of tenancy, on the two month notice to end tenancy, is February 29, 2016. Pursuant to section 55(2) I am issuing a formal order of possession effective on February 29, 2016. The Order may be filed in the Supreme Court for enforcement.

I accept the tenant's testimony that he made application only after the landlord informed him on December 22, 2015, that he had to move out on January 31, 2016 after initially having agreed to a move out date of February 29, 2016. I find that the tenant missed out on the timeline to make application to dispute the notice, because the landlord changed his word. Therefore I order the landlord to reimburse the tenant the amount of the filing fee of \$50.00 along with the compensation of one month's rent, pursuant s. 51.

### **Conclusion**

I grant the landlord an order of possession effective on February 29, 2016.

The tenant's application is dismissed.

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 11, 2016

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Residential Tenancy Branch

