



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, MT

### Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on February 11, 2016 to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice"), and for more time to cancel the Notice.

The Tenants and Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed personal receipt of the Tenants' Application. The hearing process was explained and the parties had no questions of the proceedings.

### Preliminary Issues and Analysis

At the start of the hearing, the Landlord testified that she had posted the Notice to the Tenant's door on January 28, 2016. The Notice was provided into evidence which details a vacancy date of February 29, 2016. I determined that the Notice on the approved form and its contents complied with Section 52 of the Act.

The male Tenant confirmed receipt of the Notice on the same day it was served to them. Therefore, taking into account section 25 of the *Interpretation Act* which allows for extension of time limits when a business office is closed or the effective date lands on a holiday, the Tenants would have had until February 9, 2016 to dispute the Notice within the time limit set by Section 47(4) of the Act. However, the Tenants did not make their Application to dispute the Notice until February 11, 2016.

The Tenants applied for more time to cancel the Notice on their Application. Section 66(1) of the Act allows an Arbitrator to extend a time limit established by the Act only in exceptional circumstances.

The male Tenant was asked about the reason why they had applied outside of the ten day time limit to dispute the Notice. The male Tenant testified that he was unable to make it to the office as the person he was relying on to give him a lift to the office was ill.

Based on the foregoing, I find the Tenants failed to provide sufficient evidence for me to determine that exceptional circumstances existed which prevented them from making the Application within the time limits set by the Act. If a party is unable to file an Application in person, they have the option of making the Application online or seeking assistance from a third

party who could have aided the Tenants to make the Application online. Therefore, I determined that the Tenants had failed to dispute the Notice within the time limits imposed by the Act and failed to convince me that exceptional circumstances existed that prevented them from applying to dispute the Notice within the time limits set by the Act.

The Tenants were informed of the provisions set out by Section 47(5) of the Act which provide that if the tenant fails to dispute the Notice within the time limits set by Section 47(4) of the Act, then the tenant is conclusively presumed to have accepted the vacancy date on the Notice and must vacate the rental suite by this date.

However, the Landlord was willing to give the Tenants more time to vacate the rental unit if the Tenants ensured that no further incidents or disturbances would take place during the tenancy, which was the reason for the Notice.

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties discussed the issues, turned their minds to compromise and decided to mutually agree to end the tenancy. The Landlord withdrew the Notice and the parties agreed that this tenancy would end at 1:00 p.m. on April 30, 2016. With the agreement of both parties, the Landlord is issued with an Order of Possession effective for this date. This order may be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental suite on this date and time.

The Tenants are still required to pay rent for April 2016. The parties understood and confirmed the voluntary nature of this agreement both during and at the conclusion of the hearing.

### Conclusion

The Landlord withdrew the Notice dated January 28, 2016. The parties mutually agreed to end the tenancy on April 30, 2016 at 1:00 p.m. The Landlord is issued with an Order of Possession effective for this date and time. The Tenants' Application is dismissed without leave to re-apply.

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: March 31, 2016

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Residential Tenancy Branch