



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EXEL SUITE INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. The tenant stated that the landlord was served via Canada Post Registered Mail on February 27, 2016 and the landlord confirmed service in this manner a day or two after February 27, 2016. I accept the undisputed affirmed testimony of both parties and find that the landlord was properly served with the notice of hearing package as per section 88 and 89 of the Act. The landlord is deemed served with the notice of hearing package as per section 90 of the Act 5 days later.

Both parties confirmed that no additional documentary evidence has been filed by either party, except the tenant's submission of the 10 Day Notice dated February 16, 2016. The landlord clarified that the tenant was served with the 10 Day Notice on February 19, 2016 by posting it to the rental unit door. The tenant confirmed receiving the 10 Day Notice in this manner on February 19, 2016.

During the hearing the tenant withdrew his claim for recovery of the filing fee. As such, no further action is required for this portion of the claim.

### Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the 10 Day Notice?  
If so, is the tenant entitled to an order to cancel the 10 Day Notice?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant provided written submission stating that the 10 Day Notice was received on February 19, 2016 and stated,

*A medical situation caused a period of unemployment. Job was not lost- merely voluntarily suspended- pending assessment current income insufficient to cover rent, but history between parties should allow settlement.*

A review of the tenant's application shows that it was filed on February 26, 2016. The tenant provided direct testimony stating that he was unable to file the application within the allowed 5 days because of work. The tenant clarified that he had attempted to attend the Residential Tenancy Branch Office on two occasions, but was not able to prior to its daily closing time. The tenant stated that he had to take a day off from work and was only able to accomplish this on February 26, 2016 which resulted in the application being filed 7 days after being served.

The landlord has stated that the tenant is been in rental arrears since January 2016 to the present and wishes to end the tenancy with the tenant.

### Analysis

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
  - a. The extension is agreed to by the landlord;

- b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

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 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.

On this basis, I find that the tenant’s reason for failing to apply for dispute within the allowed timeframe “because of work” does not constitute an exceptional reason. I find that the tenant’s reason is not strong or compelling in the circumstances. The tenant’s application for more time is denied.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant’s failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by February 27, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession.

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 15, 2016

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Residential Tenancy Branch