



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; an order to have the landlord turn hydro back on; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

At the outset of the hearing, I clarified the tenant's original Application was submitted as "other" and that primarily the tenant was looking for additional time to submit an Application for Dispute Resolution seeking to cancel a notice to end tenancy.

I also clarified with the tenant that hydro had been turned back on and he no longer required an order to have the landlord do so.

The tenant had submitted an amended stating that he had received a 2<sup>nd</sup> 2 Month Notice to End Tenancy for Landlord's Use of Property on June 9, 2016. However, the tenant confirmed that he had not received a 2<sup>nd</sup> Notice.

In addition I noted that the tenant submitted, as part of an amendment, a claim for \$25,000.00 however the tenant provided no additional detail as to why he was seeking \$25,000.00 or how he came to the amount claimed. As such, I find it would be prejudicial to the landlord to adjudicate this claim as the tenant has provided insufficient detail to allow the landlord to respond. I did not accept this portion of the tenant's amendment. I note the tenant remains at liberty to file a new and separate Application for any claims of compensation.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession

if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to submit an Application for Dispute Resolution seeking to cancel a notice to end tenancy and to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Sections 49 and 66 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

### Background and Evidence

The parties agreed that while the tenant has been renting from these landlords since 2009 this tenancy began in 2011 as a month to month tenancy for a monthly rent of \$760.00, including hydro, with a security deposit of \$380.00 paid.

The parties differed on when rent was due: the tenant submitted rent was due either at the end of the month or the first of the month depending on if the start of the month was on a Saturday and the landlord submitted rent was due on the 1<sup>st</sup> of each month.

Both submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 6, 2016 with an effective date of July 7, 2016 citing the rental unit will be occupied by the landlord or a close family member of the landlord.

The tenant submitted that he had hired a person to represent him in this matter and that that person had submitted an Application for Dispute Resolution and a hearing date was set for May 27, 2016 but that when it came time for the hearing he could not find this person. He stated that he contacted the Residential Tenancy Branch (RTB) and was told that his Application had been dismissed.

As a result, the tenant seeks additional time to submit his Application to seek to cancel the 2 Month Notice.

A review of the RTB files shows that on May 4, 2016 a party filed an Application for Dispute Resolution on behalf of the tenant seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to dispute an additional rent increase; and a

monetary order. Audit notes on the file also show that because the filing fee was not paid and an Application for a Fee Waiver was not submitted the file was considered abandoned on May 11, 2016 and the file was closed. A hearing was not scheduled or convened.

The landlords submit that the issues between the tenant and his agent should not impact the fact that the tenant has filed to dispute the notice 58 days after receiving it. The landlords submitted the Notice was served to the tenant on April 6, 2016 personally.

### Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

Based on the submissions of the tenant and the Residential Tenancy Branch records, I accept that the tenant had an agent submit an Application for Dispute Resolution on his behalf on May 4, 2016 that included seeking to cancel the 2 Month Notice issued and served by the landlords on April 6, 2016.

As such, I note that had that Application been set to a hearing and the matter heard that the tenant's agent submitted the Application 30 days after the Notice was received by the tenant. The tenant provided no explanation during this hearing as to why he and/or his agent waited 30 days to submit that Application.

While I also accept the tenant's testimony that his agent failed to represent his interests and as a result he seeks additional time I find that the issue is between the tenant and his agent and does not represent exceptional circumstances that would warrant granting an extension.

I find that even if I were to grant an extension for this Application the original Application was also made outside of the 15 days allowed for a tenant to submit an Application to dispute a 2 Month Notice. As the tenant has provided no explanation as to why that original Application was submitted 30 days after it was received I find the tenant has provided no extenuating circumstances to warrant a granting of extension even for the first Application.

For these reasons, I dismiss the portion of the tenant's Application seeking additional time to dispute the 2 Month Notice issued by the landlord on April 6, 2016.

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49(8) of the *Act* stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

As I have found the tenant is not entitled to an extension and the tenant did not file either of his Applications for Dispute Resolution within 15 days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property on April 6, 2016 I find the tenant is conclusively presumed to have accepted the tenancy has ended and he must vacate the rental unit in accordance with the 2 Month Notice. I therefore dismiss the tenant's Application for Dispute Resolution.

However, during the hearing the landlords agreed that they would not require the tenant to vacate by July 7, 2016 (the effective date) but they would allow him to stay until July 30, 2016. I note the tenant asked to be extended until August 31, 2016 but the landlords did not agree to such a date.

As I have determined the tenant is not entitled to an extension of time and that the tenant is conclusively presumed to have accepted the end of the tenancy as per the Notice, I have made no rulings or findings of fact related to the merits of the 2 Month Notice issued by the landlord. I also have not recorded any of the testimony regarding the merits of the Notice in this Decision.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on April 6, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's

notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

### Conclusion

I find the landlord is entitled to an order of possession effective **July 31, 2016 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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: July 05, 2016

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Residential Tenancy Branch