



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Dogwood Holdings Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNC

This hearing, which was set for 9:00 am, dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause and granting her more time in which to file that application.

The landlord filed late evidence, so clearly had received notice of the hearing, but did not appear at the hearing. The tenant called from the hospital accompanied by the hospital social worker. Cognizant of the fact that parties may sometimes have difficulty calling into a hearing I kept the call open until 9:15 am.

The landlord filed evidence a day after the time limit for doing so. The package did not include any evidence as to how or when the evidence package was served on the tenant. The tenant has been in the hospital since August 20 so had not personally received the documents. As there was no evidence that the documents had been served by registered mail or posting to the door of the rental unit within the required time, I could not admit the landlord's document package into evidence.

The notice to end tenancy was dated July 7, 2016. The tenant testified that it had been posted to the door of the rental unit and that her neighbour had picked it up on July 15. Assuming the notice was posted on July 7, pursuant to section 90(c) of the *Residential Tenancy Act* it is deemed received by the tenant on July 10. Of course, if the notice was actually posted later the deemed delivery date would be later. There was no evidence filed as to the actual date of posting.

The tenant had ten days to dispute the notice. Her agent filed an application for dispute resolution on July 18, 2016. There was a delay while the tenant and/or her agent submitted the information required for a waiver of the filing fee. That information was submitted to the Residential Tenancy Branch on July 27. For reasons that are not clear on the file the tenant was not notified that the hearing package was available for pick-up and the file moved to the open files until August 10.

Section 66 allows an arbitrator to extend a time limit in exceptional circumstances. *Residential Tenancy Policy Guideline 36: Extending a Time Period* sets out some of the reasons that would be not considered as “exceptional” and some that would be considered “exceptional”. Not knowing the procedure is not exceptional; being in the hospital is.

In this case the tenant knew the procedure and filed the application within the time required. All of the delay was caused by her difficulty in providing financial information to the Residential Tenancy Branch, and after that, the internal procedures of the Branch.

Given the facts that the tenant is of very limited means, has apparent health difficulties and did attempt to file the correct application within the time required, I am prepared to grant her an extension of time in which to file her application disputing the notice to end tenancy.

On applications such as this the onus is on the landlord to establish, on a balance of probabilities, the grounds stated on the notice. The landlord did not appear at the hearing. Even if I had admitted the landlord's written evidence package, it did not contain enough information to meet the landlord's burden of proof; it would have had to be supplemented by oral testimony. In the absence of any evidence from the landlord I grant the tenant's application.

The 1 Month Notice to End Tenancy for Cause dated July 7, 2016, is set aside and is of no force or effect. The tenancy continues until ended in accordance with the *Residential Tenancy Act*.

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: September 13, 2016

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Residential Tenancy Branch