



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL O

### Introduction

This hearing dealt with an application by the tenant for an order allowing the tenant more time to make an application to cancel a Notice to End Tenancy and an order cancelling the landlord's 2 Month Notice to End Tenancy dated June 28, 2016. At the hearing the landlord made an oral request for an order of possession based on the 2 Month Notice to End Tenancy.

Both parties attended the hearing. Both parties had an opportunity to give testimony that was relevant to the issues in question.

### Issues

Is the party entitled to the requested orders?

### Background and Evidence

This tenancy began on June 28, 2014. The rent is \$975.00 per month. On June 28, 2016 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The use indicated on the Notice was that "the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant." The tenant testified that she received the Notice on June 29, 2016.

The tenant testified that she discovered on July 24, 2016 that the landlord was showing the rental unit to prospective tenants. As a result, the tenant filed an Application for Dispute Resolution disputing the Notice on July 26, 2016. The tenant testified that she disputed the Notice as soon as she learned that the landlord had plans to rent the unit to new tenants and that the landlord had not, in her words, issued the Notice in "good faith". The tenant testified that the dislocation she will suffer as a result of being evicted is significant because of her ongoing medical condition. The tenant also submitted a

written statement which stated in part as follows: “My existing medical conditions have been exacerbated by chemical and noise pollution and vibrations from renovations on the main house which began Jan 4 and is continuing.”

The landlord testified that the Notice had been issued for the purpose of conducting long overdue maintenance and repair that was needed to the rental unit which repairs he had tried to conduct while the tenant was in residence. The landlord testified that he made every effort to do the work without an eviction but that the tenant had hindered all attempts by him to make these repairs. The landlord testified that there is approximately 4 months’ worth of ongoing noisy and vibrating repairs that need to be made to the envelope of the unit as well as other repairs. The landlord testified that if he could have made the repairs while the tenant remained in the unit he would have done so.

### Analysis

Section 49 of the Act requires that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may dispute the notice by making an application for dispute resolution within 15 days after the date the tenant receives the notice. Section 49 goes on to state that if a tenant does not make an application 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 by that date.

In the present case, the 15 day time limit for filing an application to dispute the Notice was July 13, 2016. However, the tenant did not dispute the Notice until July 26, 2016 – thirteen days after the legislated time limit.

The tenant testified that she did not dispute the Notice on time because she only became aware of the landlord's plan to re-rent the unit to new tenants on July 24<sup>th</sup>. To her mind, this was evidence of the landlord's lack of good faith in issuing the Notice. The tenant also argued that this “lack of good faith” justified an extension of the time limit for disputing the Notice pursuant to Section 66 of the Act.

Section 66 of the Act states that the director may extend a time limit established by this Act only in exceptional circumstances. So the question in this case is whether the tenant has established “exceptional circumstances” such as to justify an extension of the 15 day deadline. In my opinion, the discovery that the landlord is interviewing new tenants does not constitute exceptional circumstances. It may well be that the tenant has a remedy available to her if the landlord does ultimately rent the unit to new tenants but that matter must be left to a future date.

Accordingly, I find that the tenant is not entitled to an extension of the time limit for filing an Application for Dispute Resolution disputing the landlord's Notice and that therefore she is conclusively presumed to have accepted that the tenancy came to an end on the effective date of the Notice. The effective date of the Notice was August 31, 2016. I find that the landlord is therefore entitled to an order of possession effective two days from the date of service.

### Conclusion

I hereby dismiss the tenant's application.

I hereby grant the landlord an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and 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: September 14, 2016

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Residential Tenancy Branch

