



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Belmont Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant's Application made August 24, 2016: MT

Tenant's amended Application made September 22, 2016: add CNC

Landlord's Application made September 1, 2016: OPC; FF

This Hearing was scheduled to hear cross-applications. The Tenant made an Application for Dispute Resolution on August 24, 2016, seeking an extension of time to make an Application to cancel a notice to end tenancy. On September 22, 2016, the Tenant amended his Application to add a request to cancel a One Month Notice to End Tenancy for Cause issued July 26, 2016 (the "Notice").

The Landlord made an Application for Dispute Resolution on September 1, 2016, seeking an Order of Possession based on the Notice; and to recover the cost of the filing fee from the Tenant.

### **Preliminary Matter**

Both parties signed into the teleconference and gave affirmed testimony. At the outset of the Hearing, I explained that it is necessary to first determine the Tenant's application for an extension of time before considering the merits of the Tenant's application to cancel the Notice.

### **Background and Evidence**

The Tenant testified that he received the Notice on July 26, 2016.

The Tenant made his Application for Dispute Resolution initially on August 24, 2016 (the "Initial Application"); however, he was confused and thought that by making the Application for an extension, he was granted the extension.

On August 29, 2016, the Notice of Hearing documents were available for the Tenant to pick up. The Tenant did not serve the Landlord with a copy of his Initial Application.

On September 1, 2016, the Landlord made its Application for Dispute Resolution seeking an Order of Possession.

On September 22, 2016, the Tenant made an amendment to his Initial Application to cancel the Notice. The Tenant served the Landlord with his amended Application and August 29 Notice of Hearing documents on September 22, 2016.

### **Analysis**

Rule 3 of the Rules of Procedure provides:

#### **3.1 Documents that must be served with the hearing package**

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

[reproduced as written]

Section 59(3) of the Act provides:

### **Starting proceedings**

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

[reproduced as written]

Section 66 of the Act provides:

### **Director's orders: changing time limits**

- 66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.
- (2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* 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.

[reproduced as written]

Time limits under the Act and Rules are provided to ensure procedural fairness. Contrary to the provisions of Rule 3.1 and Section 59(3) of the Act, the Tenant did not provide the Landlord with the Notice of Hearing package until 24 days after they were available. I find that the Tenant made his amended Application to dispute the Notice beyond the effective date of the Notice and therefore I am statute bound to dismiss his application for an extension of time.

The Tenant's application is dismissed. I find that the tenancy ended on August 31, 2016, and the Tenant is overholding. Pursuant to the provisions of Section 55 of the Act, I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant; however, during the Hearing the Landlord requested the Order to be effective November 30, 2016.

I further find that the Landlord is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

### **Conclusion**

The Landlord is hereby provided with an Order of Possession **effective 1:00 p.m., November 30, 2016**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct **\$100.00** from the security deposit in recovery of the cost of the filing fee. The remainder of the security deposit must be applied in accordance with the provisions of the 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: October 19, 2016

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Residential Tenancy Branch