



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding One West Properties Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant's Application made September 22, 2016: MT; CNC; FF  
Landlord's Application made October 24, 2016: OPC; FF

### **Introduction**

This Hearing was scheduled to consider cross applications. The Tenant seeks an extension of time to make an application to cancel a notice to end tenancy; and to cancel a Notice to End Tenancy issued July 25, 2016 (the "Notice"); and to recover the cost of the filing fee from the Landlord.

The Landlord seeks an order of possession based on the Notice; and to recover the cost of the filing fee from the Tenant.

Both parties signed into the teleconference and provided affirmed testimony.

I explained to the parties that I would consider the Tenant's application for an extension prior to hearing evidence with respect to whether or not the Notice should be cancelled.

### **Preliminary Matter**

The Tenant has applied for an extension of time to dispute the Notice. He stated that he was out of the country and received the Notice issued July 25, 2016, on August 28, 2016, under his door. He stated that he was prevented from making his Application until September 22, 2016, because he was unaware that he was able to dispute the Notice.

The Tenant did not provide documentary evidence in support of his testimony that he was out of the country until late August, 2016.

## **Analysis**

Section 47(4) and (5) of the Act provides:

### **Landlord's notice: cause**

**47** (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[reproduced as written]

I accept that the Tenant did not receive the Notice until August 28, 2016, and therefore the time limit for making his application was September 7, 2016.

Section 66(1) 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]*.

[reproduced as written]

Residential Tenancy Branch Policy Guideline 36 provides the following guideline with respect to "Exceptional circumstances":

### **Exceptional Circumstances**

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 very 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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

[reproduced as written]

Based on the Tenant's testimony, and the lack of supporting documentary evidence, I find that he has not provided sufficient evidence that there were exceptional circumstances that prevented him from making his application within the 10 day time limit set under Section 47 of the Act.

Therefore, the Tenant's application for an extension of time is dismissed.

Further to the provisions of Section 47(5) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on September 30, 2016. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession.

Section 55 of the Act provides that a landlord is entitled to an order of possession if a tenant's application to cancel a notice to end tenancy is unsuccessful. Therefore, I decline to award the Landlord recovery of the filing fee.

The Tenant asked for more time to find other living accommodation and suggested March 31, 2016. The Landlord's agent stated that the strata corporation was levying fines of \$200.00 per week because the Tenant is letting the rental unit out on Air B&B. The Landlord's agent asked for an Order of Possession to be effective December 31, 2016.

**Conclusion**

The Landlord is hereby provided with an Order of Possession effective 1:00 p.m., December 31, 2016. This Order may be filed in the Supreme Court of British Columbia 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: November 16, 2016

---

Residential Tenancy Branch