



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kelson Group Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes CNC FF MT

### Introduction

This hearing dealt with an application by the tenants for an order allowing an extension of the time period for filing a dispute to a 1 Month Notice to End Tenancy, an order cancelling the landlord's 1 Month Notice to End Tenancy dated September 27, 2016 and an order allowing recovery of the filing fee from the landlord. The landlord made an oral request for an order of possession at the hearing. Both parties attended the hearing and had an opportunity to be heard.

At the outset of the hearing, it was noted that the Notice to End Tenancy was incorrectly dated October 27, 2016 but it was served on the tenants on September 27, 2015. The parties acknowledged that the date on the Notice was incorrect and I ordered the date corrected at the hearing such that it is properly dated September 27, 2016.

As well, the effective date of the Notice is automatically corrected from October 27, 2016 to October 31, 2016 pursuant to Section 53 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to an order extending the time period for filing a dispute?

If no, the matter ends there.

If yes, has the landlord proved the allegations contained in the Notice to End Tenancy?

Are the tenants entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession?

### Background and Evidence

This tenancy began on March 1, 2014. The rent is \$1250.00 per month. On September 27, 2016 the landlord served the tenants with a 1 Month Notice to End Tenancy for

Cause. The tenant disputed the Notice by filing an Application for Dispute Resolution on October 18, 2016.

The tenants testified that they filed their application late “...*because we did not have enough money to pay the filing fee and we knew we would not qualify for the fee waiver because we make too much money.*” The tenants testified that they make approximately \$70,000.00 per year. The tenants further testified that they “had a lot on their plate” at the time in question as the male tenant’s father was very ill and they were caring for their granddaughter who was born in July to their 18 year old daughter. The tenants testified that they called the RTB to inquire about disputing the Notice but found the wait time on the phone to be too long to wait. The tenants also testified that they read the RTB website and “surmised” that they would not qualify for the waiver. The tenants testified that they knew they were supposed to file in 10 days and tried to do so but that the online application would not process her application without the fee payment.

The parties also gave testimony relating to the allegations contained in the Notice. I proceeded to take this testimony because I had not yet determined whether the tenants should be entitled to an extension of the dispute time frame. Because of the analysis I have done below and the outcome thereof I have not recorded all the details of the testimony of the parties on the cause for this Notice. A summary of the situation is that the landlord alleges that the male tenant has been intimidating and harassing the residential caretaker and other occupants by videotaping, photographing, spreading malicious rumours about the caretaker and being generally hostile to people in the building. The tenants’ response to this was that none of it was true and that it is the caretakers’ fault because she had been encouraging other tenants to complain about them.

### Analysis

The tenants have requested an extension of the time period for filing an application to dispute a 1 Month Notice to End Tenancy. Section 47 of the Act provides in part as follows:

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.

In the present case, the tenants did not dispute the Notice within 10 days of service but rather disputed the Notice on October 18, 2016 which was 21 days after receipt. The Act states that if you do not dispute within the time frame, you are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. However, the Act does have a provision which allows for an extension of the deadline for disputing a Notice. This provision states as follows:

**66** (1) The director may extend a time limit established by this Act only in exceptional circumstances...

So the issue that then needs to be determined is whether the tenants' reason for missing the dispute date constitutes "exceptional circumstances". In assessing this question I refer to Residential Tenancy Policy Guideline No. 36 which provides as follows:

### **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.

In the present case, the tenants claim that their belief that they would not qualify for a fee waiver and their very busy family commitments were the reason they failed to dispute the Notice in time. However, I note that the tenants never actually explained their situation to a representative at the RTB but rather “surmised” that they would not qualify for a fee waiver and opted not to wait on the phone to speak to such a representative about the situation. I also note that while the tenants clearly have a big load to carry at home with parental and child obligations, I am unable to find that these circumstances are “exceptional” in nature. The example given in the policy guideline about being in hospital at all material times and being able to give evidence to support this claim together with an explanation as to why the party’s condition in hospital prevented them from having someone else act on their behalf is, in my opinion, a much higher standard for what constitutes ‘exceptional circumstances’ than what I have before me in the present case.

I find that the tenants’ explanation for not filing within the required time frame is more in the nature of an excuse than a strong and compelling reason rising to the level of “exceptional circumstances”. As a result, I dismiss the tenants’ application for an extension of the time frame for filing their dispute application.

The result follows that the tenants are in the position of having not disputed the Notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice which was October 31, 2016 and had to vacate the rental unit on that date.

No further analysis of the grounds for the Notice is required under the Act.

### Conclusion

I dismiss the tenants’ application.

I grant the landlord an order of possession effective two days from the date of service. 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: December 13, 2016

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Residential Tenancy Branch