



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, MT, OPC, OPB, FF

### Introduction

This was a cross-application hearing.

On December 16, 2016 the tenant applied for more time to apply to cancel a one month Notice to end tenancy for cause and to cancel the Notice that was issued on November 25, 2016 and to recover the filing fee cost from the landlord.

On December 29, 2016 the landlord applied requesting an order of possession based on the Notice ending tenancy for cause and breach of a material term of the tenancy agreement and to recover the filing fee cost from the tenant.

Both parties were present at the hearing and confirmed receipt of all documents served by the other. At the start of the hearing I introduced myself and the participants. The parties were affirmed. The hearing process was explained. Evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on November 25, 2016 be cancelled or must the landlord be issued an Order of possession?

### Background and Evidence

The tenancy commenced in 2013. Rent is due on the first day of each month.

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on December 31, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord; and

- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord.

The tenant confirmed receipt of the Notice ending tenancy on November 25, 2016. The tenant was not familiar with the process and did not thoroughly review the second page of the Notice which provides information on the timing of an application to dispute a Notice.

The tenant applied to dispute the Notice on the 21<sup>st</sup> day after receiving the Notice.

### Analysis

In accordance with section 49 of the Act, the landlord has issued a one month Notice to end tenancy for cause on November 25, 2016. I find that the tenant received the Notice on November 25, 2016; the date confirmed by the tenant.

Sections 49(4) and (5) of the Act provide:

*(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.*

The tenant has confirmed that he was unaware of the requirement he dispute the Notice within 10 days of receipt. It appears the tenant did not closely read page two of the Notice. The tenant presented no compelling reason for this oversight, other than he was not familiar with the process.

Section 66 of the Act provides:

**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.*

In the absence of any exceptional circumstance that barred the tenant from making the application within the time limit established by section 49(4) of the Act, I find that there is no basis to extend the time limit to dispute the Notice to December 16, 2016.

If the tenant had carefully read the Notice when it was received the tenant would have been fully informed of his rights and obligations. While unfortunate for the tenant; that failure does not constitute an exceptional circumstance.

As a result I find that the tenants' application requesting an extension of time to dispute the Notice is dismissed.

Therefore, I find that the tenants' application to dispute the one month Notice ending tenancy for cause issued on November 25, 2016 is dismissed as the tenant did not dispute the Notice within the required time limit.

Section 55(1) of the Act provides:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

As the tenants' application is dismissed and the Notice complies with section 52 of the Act, I find pursuant to section 55(1) of the Act that the landlord must be issued an order of possession.

The landlord said they are willing to serve any order of possession to the tenant later in the month; allowing the tenant to vacate on January 31, 2017. The tenant must first pay rent that is due for January 2017. The landlord will issue a receipt for use and occupancy only.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

While the landlords' application has essentially succeeded; as the landlord was not required to submit an application requesting an order of possession I decline filing fee costs to the landlord.

### Conclusion

The tenants' application is dismissed.

The landlord is entitled to an order of possession based on the tenants' application.

The landlords' application was not required.

Filing fees are declined.

This decision is final and binding and 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: January 19, 2017

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Residential Tenancy Branch