



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNC

### Introduction

This hearing dealt with an application by the tenant filed under the *Residential Tenancy Act* (the “Act”) on February 6, 2017 to cancel a 1 Month Notice to End Tenancy for Cause issued on January 23, 2017 (the “Notice”). The tenant also applied for more time to apply to cancel the Notice.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the notice of hearing was considered. The tenant testified that he handed the application, notice of hearing, and supporting evidence to the landlord when she came to the rental unit to collect his rent, which he always pays before the first of the month. Based on the tenant’s evidence I find that the landlord was served in accordance with the Act on or before March 1, 2017.

The tenant also advised that the landlord had agreed that the tenancy could continue. However, as the landlord has not attended this hearing I cannot document any settlement agreement and must therefore consider the tenant’s application in the landlord’s absence.

The tenant gave affirmed testimony and had the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

### Issues to be Decided

Should the tenant be granted more time to apply to cancel the Notice?

Should the Notice be cancelled?

### Background and Evidence

The tenant gave affirmed and undisputed testimony that he has undergone two surgeries in the last several months for a subdural hematoma. He has suffered from an accumulation of blood in his brain, which was first drained and then treated with a craniotomy. A medical note dated January 30, 2017 was in evidence. In it the doctor states: “Should not be evicted. Had severe problem with bleeding on the brain. Now corrected.” Another doctor’s note written on February 3, 2017 states that the tenant should “absolutely not” be “packing, lifting, squatting, moving house.”

The tenant testified that he was still having some difficulty with basic tasks and that his short term memory has been affected. As a result he was unable to remember when the tenancy

began. He testified that rent of \$650.00 is payable on the first of each month, and that he always pays rent a bit early because of when he receives his income.

The tenant was also unable to recall the date he received the Notice. The landlord has not indicated the date of service on the Notice. The Notice is date stamped as having been received by the Ministry of Social Development and Social Innovation (the "Ministry") on January 31, 2107.

### Analysis

Section 47(1) of the Act allows a landlord to end a tenancy for cause. Unless the tenant agrees with the termination of the tenancy, the tenant must dispute a notice under this section by filing an application within 10 days of receipt. Here, the Notice was received by the Ministry on January 31, 2017 and the tenant filed his application on February 6, 2017. Accordingly, I find that the tenant has filed his application within the 10 day time limit. Based on his brain injury and hospitalization I would have granted the tenant an extension of time under s. 66 of the Act in any event.

Once a tenant disputes a notice, the burden of proof is on the landlord on a balance of probabilities to establish the cause alleged. Here, the landlord has not attended the hearing and has therefore not established that there is cause to end the tenancy. Therefore, I grant the tenant's application to cancel the Notice. The Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

### Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 10, 2017

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Residential Tenancy Branch