



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNL

### Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued on March 31, 2017 and an Order for more time to make such an application pursuant to section 66(1) of the *Residential Tenancy Act*.

The hearing was conducted by teleconference on April 4, 2017. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on March 6, 2017 by registered mail to the address provided by the Landlord on the Notice. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Tenant advised that the registered mail was returned as undeliverable.

*Residential Tenancy Policy Guideline, "12. Service Provisions"* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Landlord was duly served as of March 11, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the Tenant be granted more time to make her application for Dispute Resolution?

2. Should the Notice be cancelled?

Background and Evidence

The Tenant testified that she has a disability related to major depression, anxiety disorder and panic attack disorder which impacts her short term memory and ability to tend to day to day and administrative tasks. She stated that due to the nature of her disability she is not able to live alone and as a result, her son and another roommate live with her.

The Tenant testified that she received the Notice on February 1, 2017. She further testified that she then attended the Service B.C. office and filled out her Application for Dispute Resolution. Notably, the Application was signed on February 16, 2017.

The Tenant testified that she thought she had taken the filled out papers back to the counter to be filed but later found them in her rental unit. She then attended Service B.C. again on March 3, 2017 (although erroneously stamped by the Residential Tenancy Branch as March 3, 2016).

The Tenant stated that she does not have a written tenancy agreement. She confirmed that she pays rent in the amount of \$750.00 which is paid to the Landlord directly from the Ministry of Social Development and Innovation.

The Tenant also stated that she was informed by staff at the Ministry of Social Development and Innovation that the Landlord has cashed her rent cheque for April 2017.

The Tenant testified that the Landlord told her that his cousin was moving into the rental unit. The Tenant stated that when she told the Landlord that a cousin was not a “close family member” as noted on page 2 of the Notice, the Landlord responded that it was his house and he could do with it what he wanted.

Analysis

Although the Tenant completed and signed her Application for Dispute Resolution form on February 16, 2017, she failed to file her application until March 3, 2016. Consequently she filed outside the 15 days required under section 49 of the *Residential Tenancy Act*.

Section 66 of the *Act* provides me authority to extend and change a time limit imposed by the *Act* and reads as follows:

**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*].

An extension of time will only be granted if the party has proof that an exceptional circumstance occurred that prohibited them from filing their application within the statutory timeframe.

*Residential Tenancy Policy Guideline 36* sets out the following factors to consider when an application for more time is requested and requires the applicant to show that:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

Based on the undisputed testimony of the Tenant, I find that she has met the test set out in section 66 of the *Act*. I accept her testimony regarding her mental health issues and find that the effect on her short term memory are such exceptional circumstances warranting an extension of time. I further find that she did not wilfully fail to comply with the time limit as she filled out and signed her application within the 15 days required by section 49. I further find that she had a bona fide intent to comply with the time limit and took reasonably, although not complete steps to comply with it. I also accept her evidence that she brought her application as soon as she discovered she had failed to file the application.

Having granted the Tenant more time to apply to dispute the Notice I must now consider whether the Notice should be cancelled.

*Residential Tenancy Branch Rules of Procedure 6.6* provides that a Landlord must prove the reason they wish to end a tenancy when the tenant applies to cancel a notice to end tenancy. Accordingly, the Landlord must attend the hearing and provide evidence in support of the Notice.

As the Landlord failed to call into the hearing to provide any evidence in support of the Notice, I grant the Tenant's application to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

Although I have cancelled the Notice, I wish to point out that a cousin is not a close family member as provided for in section 49(1) which reads as follows:

**"close family member"** means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

Consequently, had the Landlord attended the hearing and confirmed that it was his intention to move his cousin into the rental unit, the Notice would have been cancelled as failing to comply with section 49.

The Tenant indicated during the hearing that the Landlord has also failed to attend to repairs, both emergency and otherwise. As she did not indicate on her Application for Dispute

Resolution that she sought such relief, I am unable to consider these requests. The Tenant was directed to contact the Residential Tenancy Branch and seek information with respect to repairs (section 32 of the *Act*) and emergency repairs (section 33 of the *Act*) as well as applications for Orders compelling the Landlord to make such repairs.

### Conclusion

The Tenant was granted more time to make her application for dispute resolution. The Landlord failed to attend the hearing to prove the Notice and therefore the Notice is cancelled. The tenancy shall continue until ended in accordance with the *Residential Tenancy 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: April 04, 2017

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Residential Tenancy Branch