



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the tenants filed under the *Residential Tenancy Act* (the “Act”), to cancel a One Month Notice to End Tenancy for Cause (the “Notice”), issued on March 24, 2017, and for a monetary order for compensation for loss or other money owed.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Preliminary and procedural matters

At the outset of the hearing the tenants confirmed that they are withdrawing their application for a monetary order, as they have filed a separate application for a future date.

Counsel for the landlord stated that the tenants’ Application was filed on April 7, 2017, which is outside the statutory time limit and is barred from being heard.

Counsel stated that the tenants acknowledged that they received the Notice on March 27, 2017; therefore, the last possible date to file their Application was April 6, 2017. Counsel stated the tenants’ Application does not seek and extension of time.

The tenants acknowledged that they received the Notice on March 27, 2017. The tenants stated that on April 5, 2017, they submitted their Application to the Residential Tenancy Branch (the “Branch”) by the online process, and that they had three business days to submit their fee waiver application, which it was submitted to the Branch on April 7, 2017.

I accept that the tenants submitted their Application by the online process on April 5, 2017; however, I do not accept the tenants were not aware that their application would be considered late if they failed to submit the payment or fee waiver within the legislated deadline as set out in section 47(4) of the *Act*.

Under section 47(4) of the *Act* the tenants were required to make an application for dispute resolution within 10 days after the date the Notice was received.

When a party files their application online they must read and agree to the terms as shown below.

The screenshot shows a web form with a title bar that reads "information, instructions and notices regarding your claim." Below the title bar, there is a question: "How would you like to receive your hearing documents?". The main content area is titled "IMPORTANT INFORMATION" in red. It contains the following text: "I understand that by selecting this option my application for dispute resolution will not be considered until the application filing fee has been paid or the application to waive the filing fee has been approved. I will need to attend the location that I selected within three business days to make the payment or get approved on my application to waive the filing fee. I will bring the reference number assigned to my application with me. I know that if my dispute has time restrictions on when the application must be submitted that the three days to attend does not extend the deadline and my application may be considered late." At the bottom of the form, there are two buttons: "Yes I agree" and "No I do not agree". Below the form, there is a link: "If you have a major credit card or Visa-debit card you may select Pay Online & Submit Now".

information, instructions and notices regarding your claim.

How would you like to receive your hearing documents?

**IMPORTANT INFORMATION**

I understand that by selecting this option my application for dispute resolution will not be considered until the application filing fee has been paid or the application to waive the filing fee has been approved.

I will need to attend the location that I selected within three business days to make the payment or get approved on my application to waive the filing fee.

I will bring the reference number assigned to my application with me.

I know that if my dispute has time restrictions on when the application must be submitted that the three days to attend does not extend the deadline and my application may be considered late.

Yes I agree No I do not agree

If you have a major credit card or Visa-debit card you may select [Pay Online & Submit Now](#)

[Reproduced as written]

In this case, the tenants would have had to agreed that they understood that their Application would not be considered until the application filing fee has been paid or the application to waive the filing fee has been approved. Further, the tenants would have had agreed that they understood that three days to attend to submit those fee waiver documents does not extend the restricted deadlines.

I accept the tenants submitted their application on April 5, 2017 and the fee waiver was submitted to the Residential Tenancy Branch within three business days, as it was submitted on April 7, 2017; however, that was not within the restricted deadline as set out in section 47(4) of the *Act*.

Further, the online process is consistent with the Residential Tenancy Branch Rules of Procedures (the “Rules”). Rule 2.6 defines at which point an application is considered to have been made.

**“The Application for Dispute Resolution has been made when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or through a Service BC office.”**

**[My Emphasis added]**

I am satisfied based on the above that the tenants’ Application was considered to be made on April 7, 2017, as that was when the fee waiver documents were submitted by the tenants. I find the tenants did not take due diligence to ensure their documents were submitted to the Branch to meet the statutory deadline as set out in section 47(4) of the *Act*.

I find the last possible date the tenants had to filed their Application and all documents for a fee waiver was on April 6, 2017. I find the tenants did not comply with the section 47(4) of the *Act* or follow the procedure that they agreed upon when submitting an online application.

Section 47(5) of the *Act* states:

(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.

As I have found the tenants did not make their Application in accordance with section 47(4) of the *Act*, I find the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which was April 30, 2017. Therefore, I find the tenants’ Application must be dismissed.

Further, the tenants did not make an application to request more time to make their application pursuant to section 66 of the *Act*, and even if they had, they provided no evidence that an exceptional circumstance occurred that prevented them from filing their Application within the statutory deadline.

## Order of possession for the landlord

**Section 55** (1) of the Act states that 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.

I have reviewed the Notice filed as evidence and, I find the Notice complies with section 52 of the Act.

Since the landlord has accepted occupancy rent for May 2017, I find that the landlord is entitled to an order of possession effective **May 31, 2017, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court.

### Conclusion

The tenants failed to make their application within the statutory deadline. The tenants' Application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: May 16, 2017

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Residential Tenancy Branch