



# 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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord's agent, SH ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. IC ('tenant'), a legal advocate, spoke on behalf of the tenant in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application.

The landlord testified that the 1 Month Notice to End Tenancy for Cause, with an effective date of April 30, 2017 ("the 1 Month Notice") was served to the tenant by leaving the notice in the tenant's mailbox. The tenant indicated during the hearing that there was no issue with the service of the 1 Month Notice. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

### **Preliminary Issue—Tenant's Application for an Extension of Time to File her Application for Dispute Resolution**

The tenant filed her application for dispute on April 11, 2017, although the 1 Month Notice was deemed to have been received on March 30, 2017, three days after the notice was left in her mailbox. The tenant has the right to dispute the Notice within 10

days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

*The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).*

Normally if the tenant does not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The 1 Month Notice was confirmed to have been received by the tenant by March 30, 2017, and she had filed for dispute resolution on April 11, 2017, eleven days later. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant, in her application, stated that she “did not understand the paperwork”, and the legal advocate stated in the hearing that due to the volume of voicemails she receives on a daily basis, she was not aware of the tenant’s request for help until April 10, 2017. The tenant filed her application, with the advocate’s assistance, the next day.

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as “*the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure*”.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenant has not met the burden of proof to justify that there is an exceptional reason for the late filing of her application. Under these circumstances, I am not allowing her application for more time to make her application, and accordingly the tenant’s application to cancel the landlord’s 1 Month Notice is dismissed.

### **Issues to be Decided**

Is the landlord entitled to an Order of Possession for cause?

### **Background and Evidence**

The landlord issued the 1 Month Notice on the following grounds:

1. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord requested an Order of Possession pursuant to the 1 Month Notice that was served to the tenant on March 27, 2017.

### **Analysis**

Section 55(1) of the *Act* reads as follows:

**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.*

Based on the testimony of both parties, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The tenant failed to make her application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to take the above actions within ten days led to the end of this tenancy on April 30, 2017, the effective date on the 1 Month Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by April 30, 2017. As this has not occurred, I find that the landlord is entitled

to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act* .

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As this tenancy has effectively come to an end, the tenant and any occupants on the premises are required to vacate the rental suite.

### **Conclusion**

I dismiss the tenant's entire application for dispute resolution.

I find that the landlord's 1 Month is valid and effective as of April 30, 2017. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 5, 2017

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Residential Tenancy Branch