



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNL FF

### **APPLICATION:**

Both parties attended the hearing and gave sworn testimony. I accept that the tenant was served with the Notice to End Tenancy on May 30, 2017 and the landlord agreed they received the Application for Dispute Resolution by registered mail. The tenant applies pursuant to the *Residential Tenancy Act* for an order to set aside a Notice to End tenancy dated May 30, 2017 to be effective July 31, 2017. The Notice to End Tenancy is issued under section 49 of the *Residential Tenancy Act* (the Act) and the tenant states that the landlord does not have all the permits required to renovate and in any case, it is not necessary for the unit to be vacant to do the planned renovations.

### **Preliminary Issue:**

The Application to Dispute the Notice was filed late. It was filed on July 31, 2017 which is the effective date of the Notice to Tenancy. Section 49 of the Act provides the tenant must file it within 15 days of receiving the Notice (which would have been June 15, 2017) and the Notice clearly advises this. The tenant said they thought they had a place secured to move into but they were scammed; they provided evidence of this. Section 66(3) of the Act states the director must not extend the time limit to make an application to dispute a notice to end tenancy beyond the effective date of the Notice.

Section 36 of the Residential Policy Guidelines addresses the issue of possibly extending the time limits for filing the Application.

*The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> provide that an arbitrator may extend or modify a time limit established by these Acts **only in exceptional circumstances**. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.*

I find the evidence does not support the finding of exceptional circumstances. Although the tenants' late application was allegedly because they were scammed when securing another rental, I note that they still do not have another unit even now five months after the Notice to End Tenancy was issued and they are no longer paying rent. I dismiss their Application as it was filed well beyond the time limit.

The landlord pointed out that they had subsequently signed a fixed term tenancy agreement with the tenants which provided the tenants would vacate September 1, 2017 and promised compensation. The tenants could not find a place so the effective date was changed to October 1, 2017 but the tenants have still not moved and are not paying rent and saying they

can't. He submits an Order of Possession should be granted as the tenants had agreed to move out to allow the renovations to proceed. He said other tenants have vacated and the building is half empty.

**ISSUES:**

Is the tenant entitled to any relief? If not, is the landlord entitled to an Order of Possession?

**Evidence and Analysis:**

I find the tenants submitted their Application to cancel the Notice to End Tenancy beyond the time limit. I find their circumstances are not sufficiently exceptional to grant an extension of time. I find further that they signed a fixed term tenancy agreement which was extended to October 1, 2017 for their benefit and they are now over holding and not paying rent. I dismiss their application.

In any case, I find the landlord's evidence credible that they have the necessary approvals for renovation and have already done a portion of it. The tenants provided no evidence of further permits being necessary. I find the unit is being gutted and would not be habitable so it is necessary for it to be vacant. Based on the evidence, I find as fact that the landlord is doing a substantial renovation to the subject unit and proceeding to do further substantial renovations to other units

**Conclusion:**

As the tenant is unsuccessful, I grant the landlord's request for an Order of Possession pursuant to section 55 of the Act. The effective date on the Notice to End Tenancy was May 31, 2017 and the subsequent tenancy agreement was effective October 1, 2017. I grant the landlord an Order of Possession effective October 17, 2017 to allow the tenants some time to move their possessions.

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: October 03, 2017

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Residential Tenancy Branch