



# 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 for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking both more time to make an application to cancel a Notice to End Tenancy and cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant T.S. and two agents for the Landlord, J.W. and N.M., (the “Agents”) all of whom attended at the appointed time, ready to proceed. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of evidence.

At the request of the parties, the decision and any orders issued will be sent to the appropriate parties at the physical or e-mail addresses provided by them in the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

### Background and Evidence

The One Month Notice in the documentary evidence before me, dated August 24, 2017, has an effective vacancy date of September 30, 2017, and indicates that it was personally served on the Tenants on August 25, 2017. The Tenant confirmed that the Notice was personally served on them on August 25, 2017.

Section 47(4) of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

As the Tenant testified that they received the One Month Notice on August 25, 2017, the Tenants had until September 5, 2017, to dispute the One Month Notice.

The Application before me indicates that the Tenants filed their Application on September 14, 2017, which is 20 days after the date upon which the Tenant T.S. testified they received the One Month Notice. The Tenant T.S. testified that they were unable to apply within the 10 days as they were hospitalized on September 5, 2017, which is the 10<sup>th</sup> day, and were not released until September 14, 2017.

However, the Tenant T.S. also testified that they did not make any efforts to file their Application prior to September 10, 2017, as they did not understand that they needed to apply within a prescribed time period. The Tenant T.S. testified that the other Tenant (J.J.) listed on the Application and on the One Month Notice did not apply within the prescribed time limit either as they work each day. Further to this, the Tenant T.S. stated that they are the primary Tenant on the tenancy agreement and therefore they did not think that J.J. could apply to dispute the One Month Notice.

### Analysis

Section 66 of the *Act* states the director may extend a time limit established under the *Act* only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

Although the Tenant T.S. testified that they are the primary tenant, I note that the tenancy agreement in the documentary evidence before me lists both the Applicants as tenants. I also note that both Applicants are listed as tenants on the One Month Notice. As a result, I find that both of the Applicants are tenants and that as a result, both Tenants knew or ought to have known that the One Month Notice applied to both of them.

Although the Tenant T.S. has provided testimony that they were unable to apply on the last day of the legislated 10 day dispute period, I find that they have not provided sufficient evidence to establish that they were unable to dispute the One Month Notice prior to this date, or that the other tenant in the rental unit, J.J., was unable to dispute the One Month Notice within the prescribed time period for exceptional or compelling reasons beyond their control.

As a result, I find that the Tenants are not entitled to more time to make an Application to cancel the One Month Notice and their late Application is therefore dismissed in its entirety.

As the Tenants' Application is dismissed, I must now consider if the Landlord is entitled to an Order of Possession pursuant to sections 55 and 52 of the *Act*. Section 55 of the *Act* states the following with regards to an Order of Possession for the Landlord:

**Order of possession for the landlord**

**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 section 55 of the *Act*, and as the Tenant's Application is dismissed without leave to reapply, the Landlord is entitled to an Order of Possession as long as the One Month Notice complies with section 52 of the *Act*.

Section 52 of the *Act* states the following with regards to the form and content of a Notice to End Tenancy:

**Form and content of notice to end tenancy**

**52** In order to be effective, a notice to end a tenancy 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,
  - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

The One Month Notice in the documentary evidence before me is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the One Month Notice, states the grounds for ending the tenancy, and is in the approved form. As a result, I find that

the One Month Notice complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. As the Tenant and the Agent confirmed during the hearing that November rent has been paid for use and occupancy only, the Order of Possession will be effective at 1:00 P.M. on November 30, 2017.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on November 30, 2017, after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 15, 2017

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Residential Tenancy Branch