



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUCCESS REALTY & INSURANCE LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPC FFL MT CNC OLC FFT

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- 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,
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The landlord’s agent, JE (“the landlord”), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. 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 tenant acknowledged receipt of the 1 Month Notice on October 24, 2017. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

At the beginning of the hearing the tenant testified that he did not receive the landlord's application and evidence in its entirety. As service of the landlord's application was not confirmed, the landlord's application is dismissed without leave to reapply. I indicated to all parties that section 55 of the *Act* still allows me to grant an Order of Possession to the landlord if the tenant's application to cancel the 1 Month Notice is dismissed. The landlord's agent requested an Order of Possession if the tenant is not granted his application to cancel the 1 Month Notice.

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

The tenant filed his application for dispute on November 27, 2017 although the 1 Month Notice was received by him on October 24, 2017. 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 on October 24, 2017, and he had filed for dispute resolution on November 27, 2017, thirty-four days later. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant, in his application, stated that he has never undergone the process of disputing a 1 Month Notice before, and was unaware of his obligations. The tenant testified that he delayed his application in order to negotiate and settle the matter with the landlord.

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 his application. Under these circumstances, I am not allowing his application for more time to make his application, and accordingly the tenant's application to cancel the landlord's 1 Month Notice is dismissed.

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 an order of possession of the rental unit to the landlord if*

*(a) the landlord's notice to end tenancy complies with section 52, and*

*(b) the director, during the dispute resolution proceedings, 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.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, November 30, 2017. I find that the landlord is entitled to a 2 day Order of Possession. 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 tenant failed to provide sufficient evidence to support how the landlord failed to comply with the *Act*, the tenant's application for the landlord to comply with the *Act* is dismissed without leave to reapply.

As the tenant was not successful in his application, I am not allowing the tenant's application for recovery of the filing fee.

**Conclusion**

Both the landlord's and tenant's application are dismissed without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of November 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(s) and any occupant of this original rental agreement 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: February 8, 2018

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Residential Tenancy Branch