



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Braeview Properties  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant's Application made January 19, 2018: MT; CNR

Landlord's Application made February 15, 2018: OPR; MNR; FF

### **Introduction**

This Hearing was scheduled to consider cross-applications. The Tenant seeks an extension of time to dispute a Notice to End Tenancy for Unpaid Rent and to cancel the Notice. The Landlord seeks an Order of Possession, a monetary award for unpaid rent and loss of revenue, and to recover the cost of the filing fee from the Tenant.

Both parties attended the Hearing and gave affirmed testimony. The parties were advised how the Hearing would proceed and were given the opportunity to ask any relevant questions they might have about the hearing process.

The Tenant testified that she mailed the Notice of Hearing, a copy of her Application for Dispute Resolution and copies of her evidence to the Landlord on January 21, 2018. The Landlord's agent acknowledged receipt of the documents.

The Landlord's agent testified that she mailed the Landlord's Notice of Hearing, a copy of the Landlord's Application for Dispute Resolution and the Landlord's evidence to the Tenant, by registered mail, on February 18, 2018. The Landlord provided a copy of the registered mail receipt and a copy of the tracking information, which indicates that the Tenant received the package on February 20, 2018.

I am satisfied that each party was duly served with the others documents.

### **Issue(s) to be Decided**

Should the Notice to End Tenancy for Unpaid Rent issued January 10, 2018 (the "Notice") be cancelled or upheld? Is the Landlord entitled to a monetary award for unpaid rent for January, 2018, and loss of revenue for February, 2018?

### **Background and Evidence**

This tenancy began on October 1, 2017. The tenancy agreement is a fixed term lease, expiring on September 30, 2018. The tenancy agreement includes a clause for liquidated damages in the amount of \$750.00. Monthly rent is \$1,865.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$932.50 on September 26, 2017.

The Tenant did not pay rent when it was due on January 1, 2018. The Landlord issued the Notice and served the Tenant by leaving a copy of the Notice in the Tenant's mail box on January 10, 2018. The Tenant stated that she received the Notice 3 days later, on January 13, 2018.

The Tenant stated that she was "expecting money", in order to pay the rent "three days before" she made her Application for Dispute Resolution, but the money "did not come". The Tenant testified that she went to the Residential Tenancy Branch on January 18, 2018, and was advised to go to "the Ministry" to get emergency funding. The Tenant testified that she went to the Ministry, by was told that she did not qualify for such funding. She stated that by the time she went back to the Residential Tenancy Branch, the office was closed and therefore she could not make her Application until the next day (one day after the deadline).

The Tenant stated that she paid \$300.00 of January's rent on January 29, 2018, but could not pay any more. She acknowledged that she still owes \$1,565.00 for January's rent, and has not paid any rent for February or March, 2018. She asked the Landlord's agent if she could have more time to pay the outstanding rent.

The Landlord's agent declined to enter into a payment schedule and asked for an Order of Possession. The Landlord's agent also asked to amend the Landlord's Application to include compensation for loss of revenue for March, 2018. She stated that the Landlord would also like to apply the security deposit towards its monetary award.

### **Analysis**

Section 46 of the Act requires a tenant to pay all of the outstanding rent or dispute the notice to end tenancy for unpaid rent within 5 days of receipt of a notice to end tenancy for unpaid rent. Section 66 of the Act allows for an extension of the time to dispute the notice, but only in exceptional circumstances.

Residential Tenancy Policy Guideline 36 provides, in part:

### **Exceptional Circumstances**

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

[Reproduced as written.]

In this case, I find that the Tenant did not provide sufficient evidence of an "exceptional circumstances" for not making her Application for Dispute Resolution within the time limit allowed. Furthermore, even if I found that there were exceptional circumstances,

which I do not, the Tenant acknowledged that she is in arrears of rent for January, February and March, 2018.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. The Tenant did not provide evidence of any right under the Act to deduct any or all of the rent.

I dismiss the Tenant's application for an extension of time and find that, pursuant to the provisions of Section 46 of the Act, the tenancy ended on January 23, 2018. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

I find that the Notice is a valid notice to end the tenancy. The Landlord's agent sought to amend the Landlord's application to include compensation for loss of revenue for the month of March, 2018. Rule 4.2 of the Rules of Procedure provides that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the Hearing. I find that the Landlord's request for compensation for loss of revenue for March, 2018 could have reasonably been anticipated. Therefore, I amend the Landlord's Application to include compensation for loss of revenue for March, 2018. I note that the Landlord did not apply for liquidated damages with respect to this tenancy agreement.

Further to the provisions of Section 72 of the Act, the Landlord may apply the security deposit towards its monetary award.

The Landlord's Application had merit and I find that the Landlord is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

The Landlord is hereby provided with a Monetary Order, calculated as follows:

Unpaid rent for January, 2018	\$1,565.00
Loss of revenue for February, 2018	\$1,865.00
Loss of revenue for March, 2018	\$1,865.00

Recovery of the filing fee	\$100.00
Less set off of security deposit	<u>&lt;\$750.00&gt;</u>
TOTAL	\$4,645.00

### **Conclusion**

The Landlord is hereby provided with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be enforced in the Supreme Court of British Columbia.

The Landlord is also hereby provided with a Monetary Order in the amount of **\$4,645.00** for service upon the Tenant. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: March 18, 2018

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Residential Tenancy Branch