



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, CNC, MT

### Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

On February 1, 2018, the Tenant applied for dispute resolution seeking more time to make an application to dispute a notice to end tenancy, and to cancel a 1 Month Notice To End Tenancy For Cause.

On March 2, 2018, the Landlord applied for dispute resolution seeking an order of possession based on issuance of a 1 Month Notice To End Tenancy For Cause dated January 9, 2018.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Should the Tenant be allowed more time to make application to dispute the 1 Month Notice to End Tenancy?
- Does the Landlord have sufficient cause to end the tenancy?

### Background and Evidence

The parties testified that the tenancy commenced in April 2016. Rent in the amount of \$375.00 is due by the first day of each month. The Tenant paid a security deposit of \$400.00 to the Landlord.

The Landlord testified that the rental unit is a self-contained unit within a building for people with barriers for housing.

The Landlord testified that the Tenant was served with a 1 Month Notice To End Tenancy dated January 9, 2018. The reasons for ending the tenancy within the 1 Month Notice are:

Tenant or a person permitted on the property by the Tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the Landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
- Put the Landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- Damage the Landlord's property
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord
- Jeopardize a lawful right or interest of another occupant or the Landlord

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that he received the 1 Month Notice on January 9, 2018. The Tenant applied for more time to dispute the 1 Month Notice on February 1, 2018; 20 days after receiving the Notice.

With respect to the Tenant's request for more time, section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances.

The Tenant was asked to provide reasons why he did not dispute the 1 Month Notice within 10 days of receiving the Notice. The Tenant testified that the stress of receiving a

notice to end tenancy incapacitated him. He testified that he went to a citizen advocacy group but was unable to get help. He testified that he suffers from a medical issue due to brain lesions that cause a build-up of fluid and cause a sleep like state for a number of days. He testified that he is not taking any medication for this medical issue. The Tenant did not provide any documentary evidence from any advocacy group and did not provide any medical evidence in support of his testimony regarding his medical issue.

### Analysis

Residential Tenancy Branch Policy Guideline # 36 Extending a Time Period is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

*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.*

Based on the evidence and testimony before me I make the following findings:

I find that the Tenant's reasons for failing to comply with the time limit are not exceptional. The Tenant provided insufficient evidence that a medical condition prevented him from applying at all material times. The notice to end tenancy contained the information on the time limits for disputing the Notice and the Tenant did not take appropriate steps to comply with the relevant time limit. I do not find that the stress of receiving a notice to end tenancy is an exceptional circumstance to allow for an extension of the time limit.

The Tenants request for more time to dispute the 1 Month Notice To End Tenancy For Cause dated January 9, 2018, is dismissed.

Section 47(5) of the Act states:

*If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.*

Under section 55 of the Act, when a Tenants application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the

requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Landlord is entitled to an order of possession of the rental unit, pursuant to section 55 of the Act. I grant the Landlord an order of possession effective at 1:00 pm on April 30, 2018, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I order that the Landlord can keep the amount of \$100.00 from the Tenant's security deposit in satisfaction of this claim.

### Conclusion

The Tenant received a 1 Month Notice To End Tenancy For Cause and did not file to dispute the Notice within the time limit. The Tenant's application requesting more time to dispute the Notice is unsuccessful and is dismissed. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective at 1:00 pm on April 30, 2018, after service on the Tenant, and I order that the Landlord can keep \$100.00 from the Tenant's security deposit to pay for the filing fee.

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: April 04, 2018

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Residential Tenancy Branch