



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- 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; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

Both parties were represented at the hearing and given full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The tenant represented himself with the aid of an advocate. The corporate landlord was represented by its agent KN (the "landlord").

As both parties were present service of documents was confirmed. The tenant confirmed receipt of the 1 Month Notice dated January 12, 2018. The landlord confirmed receipt of the tenant's application dated February 16, 2018 and evidentiary materials. The landlord said they had not served any evidence on the tenant. Based on the undisputed testimonies I find that the tenant was served with the 1 Month Notice and the landlord was served with the application and evidence in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to more time to file the application to dispute the landlord's 1 Month Notice? Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### Background and Evidence

This tenancy began in October, 2017. The monthly rent is \$1,000.00 payable on the first of each month. The tenant was served with the 1 Month Notice on January 12, 2018. The tenant filed an application to dispute the 1 Month Notice on January 19, 2018 under the file number on the first page of this decision.

The tenant submits that the first application contained an error as they mis-transcribed the landlord's postal code of their address for service provided on the tenancy agreement. As a result of this error the landlord was not served with the original application.

The tenant testified that upon learning of this error they cancelled the original application and filed the present application on February 16, 2018. The landlord confirmed that they were served with the February application.

### Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that "exceptional implies that the reason for failing to do something at the time required is very strong and compelling." Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 47(4) of the *Act* provides that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present application the parties confirmed that the landlord's 1 Month Notice was served on the tenant on January 12, 2018. The tenant filed an initial application for dispute resolution on January 19, 2018 but that was not served on the landlord and later cancelled by the tenant. The tenant filed a second application disputing the 1 Month Notice on February 16, 2018, after the 10 days provided by the *Act*.

The tenant submits that the transcription error which led to the first application not being served and having to file a second application are exceptional circumstances that give rise to a basis for an extension of the statutory time limit. I do not agree with the submission. I accept that the tenant had a bona fide intention to comply with the time

limit and took reasonable steps to comply by filing their first application within the 10 days provided by the Act and sending by registered mail. However, the undisputed evidence is that the first application was not served as the tenant mailed the package to an incorrect postal code.

The tenant gave evidence that they were only made aware that the application was not served on the landlord when they attended at the post office for a separate matter on February 16, 2018. However, as the application was sent by registered mail I find that the tenant had the opportunity to track its progress online and address any issues with delivery in a timely fashion. I find that the tenant has not provided evidence that the error in the initial application was brought about by circumstances that are any more exceptional than a simple transcription error. Under the circumstances I am unable to find that there were exceptional circumstances to allow an extension of a time limit established by the *Act*. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, February 28, 2018.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

### Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises 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: April 30, 2018

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Residential Tenancy Branch