



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MT

### Introduction

This decision pertains to the Tenant's application for dispute resolution made on March 13, 2018, under the *Residential Tenancy Act* (the "Act"). The Tenant seeks the following relief:

1. an extension of time to file an application for dispute resolution; and,
2. a cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "Notice").

The Tenant's representative, a health authority case manager, attended the hearing before me, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord did not attend.

The Tenant's representative testified that they provided the Landlord with the Tenant's application for dispute resolution hearing package sometime after March 15, 2018, but did not provide additional information regarding service. The representative testified that they had been in communication with the Landlord regarding the Tenant's mental health needs, and, the Landlord submitted various documentation on April 23, 2018, to the Residential Tenancy Branch (the "Branch"). Given the above, I find that pursuant to section 71 of the Act, the hearing package was sufficiently served under the Act.

The representative testified that on April 27, 2018, they contacted the Branch requesting that the hearing be cancelled. The Branch advised that written consent of both parties would be required. The representative testified this was not possible given the short notice, and that they would attend the hearing.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application will be considered in my decision.

### Issues to be Decided

1. Should the Tenant be provided an extension of time to file an application for dispute resolution?
2. Should the Landlord's Notice be cancelled? If not, is the Landlord entitled to an order of possession?

### Background and Evidence

The Tenant's representative submitted into evidence a copy of the Notice, which was served in-person on the Tenant on February 15, 2018. They testified that they, and others, only became aware of the Notice after the ten-day period in which to dispute the Notice had passed. The representative testified that the Tenant lacks capability to understand the issues raised by the Landlord that led to the Notice being issued. They also noted that an *Adult Guardianship Act* investigation is underway. The representative sought additional time to file an application to dispute.

The Tenant's representative testified that they had "been working hard with the Landlord" on finding a more suitable accommodation for the Tenant, with better mental and healthcare support services appropriate to the Tenant's needs. They confirmed that the Tenant currently resides in the rental unit, but that they will be moving shortly.

### Analysis

Section 47 (4) of the Act requires that a tenant must file an application for dispute resolution within 10 days after the date that the tenant receives a notice to end tenancy for cause. Failure to do so results in the following: (1) a conclusive presumption that the tenant has accepted that the tenancy ends on the effective date of the notice; and, (2) the tenant must vacate the rental unit on that date.

Section 66 (1) of the Act permits an arbitrator to extend a time limit established by the Act in exceptional circumstances. Section 66 (3) prohibits an arbitrator from extending "the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice."

The Tenant received the Notice on February 15, 2018, for an effective end tenancy date of March 31, 2018. The Tenant's representative filed an application for dispute resolution on March 13, 2018, before the effective date of the notice.

The Tenant's representative testified that, due to the mental capacity issues of the Tenant, the Tenant did not bring the Notice to the representative's attention until after the ten-day period had elapsed. Having considered all of the undisputed testimony of the representative regarding the Tenant's mental capacity issues, I find that this is an exceptional circumstance, and hereby extend the time limit to make an application for dispute resolution to March 13, 2018.

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. The Landlord did not appear at this hearing to prove their cause as alleged in the notice.

Therefore, the Landlord's Notice, dated February 15, 2018, is cancelled and of no force or effect. The Landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

#### Conclusion

I allow the Tenant's application to cancel the Landlord's Notice. The Landlord's Notice, dated February 15, 2018, is cancelled and of no force or effect.

The tenancy continues until it is ended in accordance with the Act.

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

---

Residential Tenancy Branch