# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SWEDISH CANADIAN MANOR SOCIETY
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MT CNC OPC FFT

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for an Order of Possession for Cause pursuant to section 55 of the Act. The tenant applied for: more time to make an application pursuant to section 66; cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47; and authorization to recover his filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's 1 Month Notice posted on his door on February 2, 2018 and I find that the tenant was deemed served with the 1 Month Notice on February 5, 2018 – 3 days after its posting on the door. The tenant also confirmed receipt of the landlord's Application for Dispute Resolution ("ADR"). The landlord confirmed receipt of the tenant's ADR. Pursuant to section 89 and 90 of the Act, I find that the parties were sufficiently served with each other's ADR packages.

Preliminary Matter: More time to Apply

As part of his application, the tenant requested a time extension to dispute the landlord's 1 Month Notice received by him on February 5, 2018. The tenant applied for dispute resolution on March 2, 2018 – 25 days after his receipt of the 1 Month Notice. Section 47(4) of the Act states that, "A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice."

Section 66 of the Residential Tenancy Act allows an arbitrator to extend a time limit only in exceptional circumstances. Residential Tenancy Policy Guideline No. 36 provides further guidance for considering an extension of time,

> 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.
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> 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.

The tenant testified that he did not know the applicable law or procedure or that he was not paying attention to the correct procedure because of the stress of receiving the Notice to End Tenancy. He testified that receiving the 1 Month Notice was very stressful for him and that he did not read the 1 Month Notice as closely as he should have. He acknowledges that the 1 Month Notice form includes the timeline information: that a tenant has 10 days from receipt of the notice to end tenancy to apply to cancel the notice to end tenancy.

One of the criteria to consider to determine whether or not there were exceptional circumstances for the tenant failing to file an application within 10 days include but are not limited to: what steps the tenant took to comply with the time limit; whether the tenant filed their application as soon as practicable; and whether there is merit to the tenants' substantive claim. In this case, as evidence to support the 1 Month Notice to End Tenancy issued to the tenant, the landlord provided 9 letters issued that were issued to the tenant between September 2017 and February 2018. Those letters advised the tenant that he was not complying with health and safety standards by refusing the landlord entrance to conduct pest control treatments and assist the tenant in reducing his belongings in his unit. The landlord's letters presented clear

documentation of the nature of the issue (bed bugs, cockroaches and lack of access in an emergency) with the tenant and the maintenance of his unit. The landlord gave testimony to describe the steps (documented in their letters) that the landlords took to address the issue with the tenant.

The tenant's application was made more than 2 weeks (15 days) after the timeline to do so. The tenant provided no evidence that, during that period of time, he made efforts to dispute the Notice to End Tenancy issued to him. After the issuance of the 1 Month Notice, the landlord sent 2 more letters to the tenant and the landlord provided undisputed testimony that he met with the tenant several times after the issuance of the 1 Month Notice to discuss the notice.

Finally, I note that the landlord's 1 Month Notice to End Tenancy would have been effective March 31, 2018. With respect to applications to extend time limits, section 66 provides that,

> **66** … (3) The director must not extend 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.

Based on the requirements under section 66 of the Act and the evidence provided by both parties, I must dismiss the tenant's application to have more time to apply as I find that the tenant provided insufficient evidence of exceptional circumstances that warrant an exception under the Act. As the tenant has not been successful in this preliminary application, I dismiss the tenant's application (to cancel the Notice to End Tenancy and recover the filing fee) in its entirety. I provide section 55(1) of the Act for the information of both parties.

> **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 to the landlord an order of possession of the rental unit if
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> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
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> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord's 1 Month Notice complied with the form and content requirements of section 55(1)(a). I find that the landlord's testimony and evidence supports grounds sufficient to warrant the issuance of the 1 Month Notice. Further, I

have dismissed the tenant's application to cancel the Notice to End Tenancy. Therefore, I must issue an Order of Possession to the landlord. I also note that the landlord has made a formal cross-application seeking an Order of Possession.

Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

The landlord is provided with a formal copy of an Order of Possession effective June 30, 2018. Should the tenant(s) 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: May 17, 2018

Residential Tenancy Branch