



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC

### **Introduction**

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"), which was served by way of Registered Mail on March 12, 2018. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenants' application on March 17, 2018, five days after mailing. The tenants confirmed receipt of the landlords' evidence. Accordingly, I find the landlord duly served with the tenants' evidence in accordance with section 88 of the *Act*. The tenants did not submit any written evidence for this hearing.

The landlord testified that the 1 Month Notice to End Tenancy for Cause, dated February 22, 2018 ("the 1 Month Notice") was personally served to the tenants. The tenants indicated during the hearing that they were personally served with the 1 Month Notice one day after the date of the 1 Month Notice. Accordingly, I find that the 1 Month Notice was duly served to the tenants on February 23, 2018 in accordance with section 88 of the *Act*.

### **Issues to be Decided**

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

### **Background and Evidence**

This month-to-month tenancy began on May 1, 2015, with monthly rent currently set at \$1,067.00, payable on the first of each month. The landlord collected, and still holds, a security deposit and a pet damage deposit in the amounts of \$412.50 each deposit.

The landlord issued the 1 Month Notice to the tenants providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
  - i) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The landlord is seeking an end of this tenancy as the landlord testified that the tenants have refused to provide access to the rental unit in accordance with the *Act* and tenancy agreement. The tenants are disputing the 1 Month Notice.

The tenant SC testified in the hearing that although she made payment on March 7, 2018 for this application, she felt her application for dispute resolution should still be considered on time as she paid the filing fee within the allowable 3 day window. The tenant SC testified that the application was filed late because she was working six days a week, and was not aware that she had filed her application late.

### **Analysis**

The tenants testified that they had applied to dispute the 1 Month Notice earlier than the payment date of March 7, 2018, within the 3 day window of making their online application.

Normally if the tenants do not file an Application within 10 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The 1 Month Notice was confirmed to have been received by the tenants on February 23, 2018, and they had filed for dispute resolution online on or before March 7, 2018. Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenant SC, in the hearing, testified that she had interpreted the 3 day payment window to pay the filing fee as an extension of the 10 days allowed under section 47(4) of the *Act*.

Residential Tenancy Branch Rule 2.4 states the following:

#### **2.4 Submit an Application for Dispute Resolution**

Applications for Dispute Resolution must be submitted through the Online Application for Dispute Resolution or to the Residential Tenancy Branch directly or through a Service BC Office with the required fee or fee waiver documents. Applicants who submit an Online

Application for Dispute Resolution and choose to pay the fee or submit fee waiver documents in person must complete payment within three days of submitting the application.

Sections 47(4) and 47(5) of the *Act* state:

47(4) 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.

47(5) 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.

As stated above, Rule 2.4 of the Residential Tenancy Branch Rules, **the “three-day period for completing payment is not an extension of any statutory timelines for making an application”**.

I find that the tenants failed to file their application within 10 days of receiving the 1 Month Notice on February 23, 2018. The tenants did not file an application under section 66 of the *Act*, requesting more time to file their application. The tenant's explanation for why they had filed their application late does not meet the definition of “exceptional circumstances” as defined below.

Section 66 (1) of the *Act* reads:

*The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).*

RTB Policy Guideline #36 clarifies the meaning of “exceptional circumstances” as *“the reason for failing to do something at the time required is very strong and compelling...Some examples of what might not be considered ‘exceptional’ circumstances include...the party did not know the applicable law or procedure”*.

On the basis of the Section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenants have not met the burden of proof to justify that

there is an exceptional reason for the late filing of their application. Under these circumstances, I find that the tenants have failed to make her application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenants to take the above actions within ten days led to the end of this tenancy on March 31, 2018, the effective date on the 1 Month Notice. Accordingly, the tenants' application to cancel the 1 Month Notice is dismissed.

Section 55(1) of the *Act* reads as follows:

**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*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the tenants were served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

In this case, this required the tenants and anyone on the premises to vacate the premises by March 31, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act* .

The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

**Conclusion**

I dismiss the tenants' application to cancel the 1 Month Notice dated March 31, 2018.

I find that the landlord's 1 Month is valid and effective as of March 31, 2018. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). 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 24, 2018

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Residential Tenancy Branch