



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, MT

### Introduction

On May 8, 2018, the Tenant applied for a dispute resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47 of the Act, seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, and requesting more time to cancel the notices pursuant to section 66 of the Act.

The Tenant and Landlord attended the hearing and all in attendance provided a solemn affirmation.

With the consent of the Tenant, the Application was amended to add his middle name in the Application as he advised that his middle name was used on the Tenancy Agreement.

The Tenant advised that he served the Landlord's son the Notice of Hearing package in person on May 12, 2018. However, the Landlord advised that her son was not served with this hearing package and she found the Notice of Hearing letter on the floor of her door on May 14, 2018. While the method of service by both parties is conflicting, neither form of service complies with section 89 of the *Act*. However, the Landlord attended the hearing and was prepared to respond to the Tenant's Application. As such, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing package and I continued the hearing.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that that complies with the *Act*.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to have the notices cancelled?
- Is the Tenant entitled to more time to cancel the notices?

### Background and Evidence

The Landlord stated that the tenancy started on April 1, 2018 and rent was established at an amount of \$800.00 per month, due on the first day of each month. A security deposit of \$400.00 was also paid. The Tenant confirmed these details. Both parties agreed that the Landlord verbally requested a rent increase to \$850.00 on March 1, 2018 and this amount was paid for March and April 2018. The Landlord was cautioned of the requirements of the Act with respect to rent increases. Nevertheless, the issue of the rent increase was not in the application before me and it remains open for the Tenant to dispute this rent increase, if they choose to do so.

All parties agree that the One Month Notice to End Tenancy for Cause was served to the Tenant by being posted on the door on April 23, 2018 and the Tenant confirmed that he received this on April 26, 2018. The reasons the Landlord served the Notice are because the "Tenant is repeatedly late paying rent" and "a tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord."

### Analysis

In considering this matter, I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of section 52 of the *Act*. I find that the One Month Notice to End Tenancy for Cause meets all of the requirements of section 52.

The undisputed evidence before me is that the Tenant received the One Month Notice to End Tenancy for Cause on April 26, 2018. According to section 47(4) of the *Act*, the

Tenant has 10 days to dispute this Notice, and section 47(5) of the *Act* states that “*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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.*”

As the tenth day fell on Sunday May 6, 2018, the Tenant must have made his Application by May 7, 2018 at the latest. However, the undisputed evidence is that the Tenant made his Application on May 8, 2018. As the Tenant was late in making this Application, he requested more time to do so. As per section 66 of the *Act*, I have the authority to extend the time frame to dispute the One Month Notice to End Tenancy for Cause “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional circumstances that prevented him from disputing the One Month Notice to End Tenancy for Cause within the required time frame, the Tenant stated that he had medical issues such as diabetes that prevented him from leaving the house as he “was not feeling ok”, that he did not look at the One Month Notice to End Tenancy for Cause until May 7, 2018, that he did not know that there was a specific time frame to dispute this by, and that he did not have anyone he knew that could make this Application for him.

Based on section 66, I have the authority to determine whether to consider if the Tenant’s testimony and reasons would constitute exceptional circumstances. However, I do not find any of the Tenant’s reasons for not disputing the One Month Notice to End Tenancy for Cause to satisfactorily be considered exceptional. There was insufficient evidence, such as a note from his doctor, that the Tenant had medical issues that prevented him from disputing the notice on time. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the One Month Notice to End Tenancy for Cause and I find that the Landlord is entitled to an Order of Possession. As the rent was not paid for June, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

With respect to the Tenant’s Application to cancel the 10 Day Notice for Unpaid Rent, this portion of the Application was not considered as the tenancy was ending due to the One Month Notice for Cause.

### Conclusion

I dismiss the Tenant’s Application and I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This order must be

served on the Tenant by the Landlord. Should the Tenant 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: June 18, 2018

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Residential Tenancy Branch