



# 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 tenants' 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 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' amended application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' amended application and evidence.

### **Preliminary Issue—Tenants' Application for an Extension of Time to File her Application for Dispute Resolution**

The tenants filed their application for dispute on June 22, 2018, although the 1 Month Notice was personally served to the tenants on May 4, 2018. The tenants have the right to dispute the Notice within 10 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

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).*

Normally if the tenant does 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 May 4, 2018, and the tenants filed for dispute resolution on June 22, 2018, 49 days later. Section 66 (1) allows me to extend the time limit established by the Act only in exceptional circumstances. The tenants, in their application, stated that their father was in the hospital in May and June 2018, and that their brother had passed away in April 2018.

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 am not allowing their application for more time to make their application.

### **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 in June 2009, with monthly rent set at \$750.00, payable on the first of each month.. The tenants are still residing at the rental unit.

The landlord issued a 1 Month Notice to End Tenancy on May 4, 2018, stating that the tenants “refused to get insurance on truck”, and “refusing to clean up garbage”. The landlord did not check off any of the boxes on the 1 Month Notice.

The landlord is seeking an Order of Possession if the tenants’ application to cancel the 1 Month Notice is dismissed.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants did not file for dispute resolution until 49 days later. I find that the tenants failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, the tenants' application to cancel the 1 Month Notice is dismissed without leave to apply.

**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.

A copy of the 1 Month Notice was submitted by the tenant for this hearing, and I find that the landlord's 1 Month Notice fails to comply with 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.

Section 47(1) of the *Act* allows a landlord to end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice. Although the landlord provided handwritten reasons for why they were seeking the end of this tenancy, the landlord did not clearly indicate which of the grounds under section 47(1) of the *Act* the landlord was seeking the end of this tenancy for. I find that the 1 Month Notice does not comply with section 52(d) of the *Act*, and accordingly the 1 Month Notice is cancelled and is of no force or effect.

This tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

**Conclusion**

The tenants' application for more time to file their application as well as their application to cancel the 1 Month Notice are dismissed.

I find that the 1 Month Notice does not comply with section 52 of the *Act*. The 1 Month Notice dated May 4, 2018 is therefore cancelled and is of no continuing force or effect. This tenancy continues until 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: July 26, 2018

---

Residential Tenancy Branch