



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KEKINOW NATIVE HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC

### Introduction

This hearing dealt with the tenant's 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 pursuant to section 47.

Both parties attended the hearing and 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.

As the tenant confirmed that they received the 1 Month Notice posted on the door by the landlord on September 27, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package hand delivered to the landlord's office on October 25, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received a copy of the landlord's written evidence on or about November 16, 2018, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*. The tenant did not provide any written evidence for this hearing.

### Issues(s) to be Decided

Should the tenant be granted an extension of time to file their application for dispute resolution due to the presence of exceptional circumstances that prevented the application from being submitted in accordance with section 47 of the *Act*? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

This one-year fixed tenancy for a subsidized rental unit began on October 20, 2016. At the expiration of the initial term, this converted to a month-to-month tenancy. The tenant's portion

of the monthly rent was set at \$710.00 initially, but reduced to \$610.00 plus \$50.00 for hydro after the tenancy agreement was signed on October 21, 2016.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by October 31, 2018, for the following reasons:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord entered into written evidence copies of four warning letters and multiple emails and notes regarding the landlord's reasons for maintaining that there were sufficient grounds to issue the 1 Month Notice.

The parties agreed that a subsequent 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was issued to the tenant on November 16, 2018.

### Analysis

Section 66(1) of the *Act* allows an arbitrator appointed pursuant to the *Act* to extend a time limit established by the *Act* "only in exceptional circumstances." Although the tenant applied to obtain additional time to file their 1 Month Notice, the tenant provided no explanation as to why no application to dispute the 1 Month Notice posted on their door on September 27, 2018 was filed within the ten day time limit for doing so. They said that their father looked after submitting this application, and provided no further details regarding exceptional circumstances that prevented the filing of the application for dispute resolution by the time required by section 47(4) of the *Act*. Under these circumstances, I dismissed the tenant's application to obtain more time to file the application for dispute resolution. I did not find exceptional circumstances that would enable me to extend the time limit established in section 47(4) of the *Act*.

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Section 47(4) 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 RTB). As the tenant was deemed

to have received the 1 Month Notice on September 30, 2018, the tenant had until October 10, 2018, to file an application to dispute the 1 Month Notice with the RTB. As the tenant's application to dispute the 1 Month Notice was not received by the RTB until October 16, 2018, the tenant has failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, October 31, 2018.

Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*". I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession. At the hearing, the landlord asked that the Order of Possession take effect on November 29, 2018. The landlord will be given a formal Order of Possession to take effect by 1:00 p.m. on November 29, 2018, which must be served on the tenant. If the tenant does not vacate the rental unit by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

I dismiss the tenant's application in its entirety. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on November 29, 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: November 27, 2018

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Residential Tenancy Branch