



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, AAT, MT

### Introduction

On December 30, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two-Month Notice to End Tenancy for Landlord’s Use of Property, to request more time to dispute the Notice to End Tenancy and to order the Landlord to allow access to the rental unit. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matters

The Tenant agreed that the priority issue for her was to determine whether the tenancy was going to continue and if she would be granted more time to dispute the Notice to End Tenancy. For these reasons, I severed the issue regarding an order for the Landlord to allow access to the rental unit, pursuant to the Rules of Procedure 2.3.

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision and include an Order. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms for a Settlement Agreement with the input from both parties. The parties could not find consensus on the terms of a Settlement Agreement; therefore, the

following testimony and evidence was heard, and a Decision made by myself (the Arbitrator).

### Issues to be Decided

Should the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated December 13, 2018 (the "Notice"), be cancelled, in accordance with Section 49 of the Act?

Should the Tenant be authorized for the extra time to apply to cancel the Notice, in accordance with Section 66 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

### Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on June 15, 2018 with the fixed term scheduled to end on January 15, 2019. The monthly rent is \$1,300.00 and due on the 15<sup>th</sup> of each month. The Landlord collected and still holds a \$650.00 security deposit.

Tenant's evidence regarding request for more time to apply to dispute the Notice:

The Tenant testified that she received the Notice from the Landlord on December 13, 2018. The Tenant did not apply for Dispute Resolution until December 30, 2018. The Tenant stated that she did not apply within the fifteen days as she had had several surgeries and was hospitalized during that time.

When prompted for more information, the Tenant stated that she was in the hospital "on and off" and had to deal with some complications of her surgery. She stated she was in the hospital on December 12, 2018 for the day and then back in on December 19, 2018. The Tenant did not submit any documentary evidence to support her testimony.

The Tenant stated that she was not well and was not organized enough to arrange an advocate to assist her or apply on her behalf. The Tenant stated that she intended on finding a new rental unit; however, needed more time to do so.

Landlord's Evidence regarding the Notice:

The Landlord testified that there was some communication, via text, between himself and the Tenant in early December 2018 about the Tenant possibly moving out of the rental unit by January 15, 2019, and that the Landlord had arranged for new tenants.

The Landlord acknowledged in his documentary evidence that he was new at being a landlord and that he had learned that the tenancy could continue as a month-to-month tenancy after the fixed-term. The Landlord stated that he is now planning to move out of his parent's home and back into the rental unit and that is the reason for the service of the Notice to the Tenant.

The Landlord stated that he served the Tenant the Notice, in person, on December 13, 2018. The Notice had an effective date of February 15, 2019. The Landlord noted that the reason for the service of the Notice was checked off on the second page and stated that the Landlord intended on occupying the rental unit by moving back into the unit.

The Landlord submitted an affidavit and letter from his parents confirming that his finances are in order, that he has a regular job, and is intending on moving back into the rental unit.

The Landlord stated that if he were to receive an Order of Possession for the rental unit, that he would extend the effective date to February 28, 2019.

### Analysis

The Tenant has applied for more time to dispute the Two-Month Notice to End Tenancy for Landlord's Use of Property. The Act states a Tenant has fifteen days to dispute the Notice. The Tenant testified that she received the Notice on December 13, 2018 and applied late for Dispute Resolution on December 30, 2018.

The Residential Tenancy Branch Policy Guideline 36 refers to the authorization for an arbitrator to extend or modify a time limit established by the Act only in exceptional circumstances.

#### Exceptional Circumstances:

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.

The Guideline continues and provides an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing, such as; the party was in the hospital at all material times.

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

In this case, I find the Tenant failed to provide sufficient evidence that due to "exceptional" circumstances, she was unable to apply for Dispute Resolution between the dates of December 13 and December 28, 2018. As such, I dismiss the Tenant's request for more time to dispute the Notice and therefore, dismiss the Tenant's application to cancel the Notice.

The Tenant did not made application pursuant to Section 49(8) of the Act within fifteen days of receiving the Notice. In accordance with Section 49(9) of the Act, the Tenant's failure to take this action within fifteen days will lead to the end of this tenancy on February 15, 2019 and would require them to vacate the rental premises by that date. However, as the Landlord has agreed to extend the effective date of the Notice to February 28, 2019, I find that the tenancy will end on February 28, 2019 and that the Landlord is entitled to an Order of Possession for the extended date. The Landlord will be given a formal Order of Possession and if the Tenant does not vacate the rental unit on or before February 28, 2019, the Landlord may enforce this Order in the Supreme Court of British Columbia.

I remind the parties in this dispute that the rules and responsibilities for tenants and landlords are still in effect and encourage them to refer to the Act and/or the Residential Tenancy Branch if they have any questions or require further information.

### Conclusion

I dismiss the Tenant's Application without leave to reapply.

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on February 28, 2019 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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: February 11, 2019

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Residential Tenancy Branch