



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC DRI MT FFL OPC

### Introduction

This hearing dealt with applications from both the landlord and the tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenants applied for:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “One Month Notice”) pursuant to section 47 of the *Act*;
- more time to make an application to cancel the landlord’s One Month Notice; and pursuant to section 66 of the *Act*,
- a determination regarding a dispute over an additional rent increase pursuant to section 41 of the *Act*.

The landlord applied for:

- on order of possession of the rental unit pursuant to section 55 of the *Act*; and,
- and reimbursement of the filing fee pursuant to section 72 of the *Act*.

Tenant, RD and landlord’s agent, SP attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the others Notice of Hearing and Application for Dispute Resolution and evidence. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

### Issue(s) to be Decided

Are the tenants entitled to more time to make an application to cancel the landlord's One Month Notice?

Are the tenants entitled to cancellation of the landlord's One Month Notice pursuant to section 47 of the Act?

Are the tenants entitled to an order for restricting an additional rent increase?

Is the landlord entitled to an order of possession of the rental unit?

Is the landlord entitled to reimbursement of the filing fee?

### Background and Evidence

The parties agreed that the tenancy started on January 1, 2016. The monthly rent is \$650.00 payable on the first day of each month. The landlord holds a \$325.00 security deposit.

The landlord issued the One Month Notice on January 9, 2019. The landlord checked the following as grounds for the Notice:

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - Damage the landlord's property.
  - Jeopardize a lawful right or interest of another occupant or the landlord.

The tenants testified that they received the notice on January 10, 2019. However, the tenants did not file their application to dispute the notice until February 7, 2019.

The tenants testified that more time was needed to file the application because both of the tenants required medical treatment following the issuance of the notice. Tenant, RB testified that he is 75 years old and he was hospitalized twice during that time period and each hospitalization lasted approximately one day. Tenant, RB also testified that his wife has a medical condition and she was also hospitalized during that time. However, the tenants were unable to provide specific details regarding the frequency or duration of tenant LB's hospitalizations following the issuance of the notice.

The tenants also testified that they needed more time to file their application because they had difficulty completing the paperwork on their computer.

The landlord testified that he issued the One Month Notice because the tenants made modifications to the rental unit without the landlord's consent including adding a window and replacing the fence.

The tenants testified that the landlord's actual motivation for issuing the One Month Notice was related to an attempted rent increase. The tenant provided a copy of a notice of rent increase sent by the landlord on August 28, 2017 which increased the rent to \$750.00 per month as of January 1, 2018. However, the tenants testified that the landlord retracted the rent increase after the tenants notified the landlord that this rent increase was not permitted under the *Act*. The tenants testified that they believe that the landlord is now attempting to retaliate against the tenants for preventing the landlord's proposed rent increase.

### Analysis

Pursuant to section 47(4) of the *Act*, a tenant has ten days after receipt of a notice to end a tenancy for cause to dispute the notice. In this matter, the One Month Notice was sent to the tenants by registered mail on January 9, 2019. The tenants testified that they received the One Month Notice on January 10, 2019. Accordingly, the tenants had ten days after the effective date of service of January 10, 2018 to dispute the notice in this case they had until January 20, 2019 to submit an application for dispute. However, the tenants did not file their application for dispute resolution until February 7, 2019.

The *Act* does permit the extension of this deadline in certain limited circumstances. Section 66(1) of the *Act* states that, "The director may extend a time limit established by this Act only in exceptional circumstances."

*Residential Tenancy Policy Guideline No. 36* explains 'exceptional circumstances' as follows:

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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- 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.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In applying this criteria to this matter, I do not find that exceptional circumstances existed to warrant extending the tenants' deadline to file a dispute under section 47.

The primary explanation the tenants provided for not filing the application for dispute resolution earlier was that they had medical difficulties and both tenants required hospitalizations after the One Month Notice was issued. While *Residential Tenancy Policy Guideline No. 36* does permit an extension when a tenant is in hospital at all material times, the tenants' testimony indicates that the tenant, RB was only briefly

hospitalized following the issuance of the notice and the tenants were not able to provide any specific details regarding the duration or frequency of tenant LB's hospitalizations. Furthermore, the tenants did not provide any medical or hospital records relating to their hospitalizations. I do not find the reasons provided by the tenants for failing to timely dispute the One Month Notice strong and compelling as required under *Residential Tenancy Policy Guideline No. 36*. As such, I am not satisfied that the tenants' medical conditions and treatment constituted an exceptional circumstance pursuant to section 66(1) of the *Act*.

In addition, I do not find that difficulty using computers constitutes an exceptional circumstance. The tenants could have submitted a paper application for dispute resolution even without computer access.

I am not satisfied that the tenants have establish that an exceptional circumstance existed pursuant to section 66(1) of the *Act* to extend the filing deadline. Accordingly, I dismiss the tenants' request for more time to file their application to cancel the landlord's One Month Notice.

Section 47(5) of the *Act* states that tenants who do not timely file an application to dispute a notice to end tenancy for cause are 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.

Since the tenants did not timely file this application to dispute the landlord's One Month Notice, I find that the tenants are conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being February 28, 2019. Accordingly, I deny the tenants' application to cancel the landlord's One Month Notice.

Section 55 of the *Act* states that a landlord is entitled to an order of possession if the tenants have not timely disputed the notice by making an application for dispute resolution. I find the form and content of the One Month Notice complies with section 52 of the *Act*. Accordingly, I find the landlord is entitled to an order of possession effective March 31, 2019.

Since this tenancy is not continuing, I dismiss the tenants' request for an order for restricting an additional rent increase as no longer being at issue pursuant to section 62(4) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Conclusion

I find the landlord is entitled to an order of possession effective at **1:00 p.m.** on **March 31, 2019**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I dismiss the tenant's request for an order for restricting an additional rent increase.

I award the landlord \$100.00 for recovery of the filing fee which may be deducted from the security deposit.

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: March 18, 2019

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Residential Tenancy Branch