



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH 350 & 360 DOUGLAS APARTMENTS  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to dispute a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an extension of time to dispute the One Month Notice, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant was present for the teleconference hearing, along with an advocate (the “Tenant”). Two agents for the Landlord were also present for the teleconference hearing as was legal counsel for the Landlord (collectively, the “Landlord”). Legal counsel made submissions on behalf of the Landlord. The Landlord also had a witness join during the hearing (the “Witness”).

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package from the Tenant along with a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

### Preliminary Matters

Legal counsel for the Landlord stated the legal name of the Landlord and asked that the respondent name as stated on the application be amended. The Tenant did not object to this. Therefore, I accept the legal name of the Landlord as stated by the Landlord's legal counsel and amend the application to change the respondent name. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

### Issues to be Decided

Should the Tenant be granted an extension of time in which to dispute the One Month Notice to End Tenancy for Cause?

If so, should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenant be granted the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy started on November 1, 2016. Current monthly rent is \$1,019.17. A security deposit and pet damage deposit were paid at the outset of the tenancy.

The Landlord submitted that the One Month Notice, dated May 7, 2019, was served to the Tenant by registered mail. While they initially stated that the notice was mailed on May 7, 2019, it was clarified that it was mailed on May 9, 2019. The registered mail tracking number was provided in evidence and is included on the front page of this decision.

Entering the tracking number on the Canada Post website confirms that the package was mailed on May 9, 2019 and a notice card was left on May 10, 2019. Final notice was provided on May 16, 2019 indicating that the package will be returned to the sender.

if not claimed within 10 days. On May 27, 2019 the package was mailed back to the sender and was delivered on May 28, 2019.

The Landlord submitted that on or around May 28, 2019 they sent a letter to the Tenant stating that the notice was returned although it had been deemed served as sent through registered mail. They stated that they also posted a copy of the notice to the Tenant's door along with this letter.

The Tenant testified that she received the Canada Post delivery notice but as she had been in recent communication with the Landlord regarding their request for a copy of her insurance, she assumed the package was about this. As such, she stated that she did not pick up the registered mail. The Tenant stated that the first time she saw the One Month Notice was on May 28, 2019 when the notice was posted on her door. She applied to dispute the One Month Notice on June 3, 2019.

The Tenant stated that she had also been having health issues during this time and attended the emergency room on May 15, 2019 due to a foot injury. The Tenant stated her intent to comply with the timelines for disputing the notice, due to applying right away after receiving the One Month Notice on May 28, 2019.

The Tenant referenced documents submitted into evidence, including a letter dated July 2, 2019 from the Tenant's employer. The letter states that the Tenant advised them that she had an injured foot on the evening of May 15, 2019 after working during the day. The letter further notes that the Tenant was off work until May 21, 2019. The writer of the letter stated that when the Tenant returned on May 21, 2019 she appeared to be struggling to walk.

The Tenant also submitted a photo of her foot taken on May 15, 2019 and an invoice for massage therapy dated May 11, 2019. The Tenant stated that this is evidence of ongoing health issues which began in early May 2019.

Both parties presented testimony and evidence regarding the Tenant's claim for an extension of time to dispute the One Month Notice, as well as regarding the merits of the One Month Notice. However, they were informed that a decision would be made regarding whether there were extenuating circumstances present that prevented the Tenant from applying in time. Based on my findings below, I do not find it necessary to document and address the testimony regarding the reasons for the One Month Notice.

### Analysis

Regarding the Tenant's application for an extension of time to dispute the One Month Notice, I find as follows:

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. If a tenant does not do so, Section 47(5) of the *Act* applies, and they are conclusively presumed to have accepted that the tenancy ends.

The Landlord first sent the One Month Notice by registered mail on May 9, 2019. The tracking number provided by the Landlord confirms that the Tenant received notification of the delivery on May 10, 2019 and again on May 16, 2019 before the package was returned to the Landlord.

Serving a document by registered mail is a valid method of service as stated under Section 88(c) of the *Act*. Section 90 of the *Act* provides deeming provisions, which in the absence of information about when the document is received, deems service after a period of time has passed. In this section, service by registered mail is deemed served 5 days after it is mailed. Therefore, I find that despite not claiming the mail, the Tenant is deemed to have received the One Month Notice on May 14, 2019. The Tenant applied to dispute the One Month Notice on June 3, 2019.

However, as stated in Section 66(1) of the *Act*, a time limit may be extended in exceptional circumstances. *Residential Tenancy Policy Guideline 36* defines exceptional circumstances as a strong and compelling reason for not meeting a deadline such as being in the hospital during this time. While the Tenant testified as to exceptional circumstances that were present, I fail to find sufficient evidence of this.

The Tenant testified that she did not pick up the mail as assumed it was about an insurance issue that was being discussed with the Landlord. However, I do not find this to be a valid reason for not claiming a package from the Landlord and instead find it should have been claimed regardless of what it was regarding.

The Tenant also testified that she was unable to pick up the mail due to a foot injury. Although she submitted evidence that massage therapy was received on or around May 11, 2019, further evidence shows that the Tenant attended the emergency room on May 15, 2019 after completing a day of work.

The Tenant did not submit sufficient evidence to establish that she was unable to walk/drive or was admitted to the hospital during the period that the notice was delivered. A letter from the Tenant's employer states that the Tenant was at work during the day on May 15, 2019, which would indicate that she was able to get around. I also note that this was 5 days after the first attempt to deliver the package. In the absence of further documentary evidence, I am not satisfied that the Tenant's foot injury led to her inability to claim the registered mail.

Instead, I find that the Tenant chose not to pick up the mail as she had made assumptions about what the Landlord was sending her. After choosing not to pick up the mail there is no evidence that the Tenant attempted to contact the Landlord to find out what the mail was or to see if they were able to deliver it in another method. While the Tenant testified that she had no prior warning that this package may be a notice to end tenancy, I find that the Landlord was within their rights under the *Act* to serve the notice by registered mail.

Therefore, as stated I am not satisfied that exceptional circumstances were present, and I decline to grant the Tenant an extension of time under Section 66 of the *Act*. Instead I find that the One Month Notice dated May 7, 2019 was deemed served on May 14, 2019, and as the Tenant applied on June 3, 2019, she was not in compliance with Section 47(4) of the *Act*. As such, Section 47(5) of the *Act* applies as follows:

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Accordingly, I find that the Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply.

Upon review of the One Month Notice, I find that the form and content comply with Section 52 of the *Act*. Therefore, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55(2) of the *Act*.

I grant an Order of Possession to the Landlord effective July 31, 2019 at 1:00 pm.

As the Tenant was not successful with the application, I decline to award the recovery of the filing fee paid for the application.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **July 31, 2019 at 1:00 pm**. This Order must be served on the Tenant. 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: July 22, 2019

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Residential Tenancy Branch