



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SWEDISH CANADIAN MANOR  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MT, CNC, LRE, MNDC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55.

The tenant applied 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;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided testimony. The landlord's agent (the landlord) stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Xpress Post with a signature requirement on June 5, 2019. The tenant stated that he was not personally served with the notice of the hearing package and the submitted documentary evidence, but was not sure if the package had been received as he had a neighbor help him with his mail. The landlord referred to a submitted photograph of the date stamped envelope by Canada Post of June 5, 2019 and a copy of the Canada Post Receipt. On this basis, I accept the landlord's evidence that the tenant was properly served with the notice of hearing package and the submitted documentary evidence and

is deemed served as per section 90 of the Act. Both parties were advised that if necessary during the hearing that if the evidence was referred to by the landlord it would be described in detail to the tenant for clarity. Both parties confirmed the tenant served the landlord with the notice of hearing package. I accept the undisputed testimony of both parties and find that the landlord was properly served.

### Preliminary Issue(s)

The tenant's application was clarified. The tenant applied for more time (MT), an order to cancel the notice to end tenancy for cause (CNC), an order to suspend or set conditions on the landlord's right to enter the rental unit (LRE) and a monetary claim for compensation of lost wages (MNDC). The tenant was unable to provide details of the request to suspend or set conditions on the landlord's right to enter and the monetary claim. Repeated attempts to clarify these requests were unsuccessful as the tenant stated he "is not sure what that is about" as he did not know all of the details of his application. As such, pursuant to Residential Tenancy Branch, Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the officer may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. Without any details of how these requests are relevant to the main issue, which is the notice to end tenancy for cause, I find that these issues are unrelated and are dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods.

The hearing shall proceed on the tenant's request for more time to make an application to dispute a notice to end tenancy. The landlord disputes the tenant's request for more time. The tenant confirmed that the application was filed on June 11, 2019 and both parties confirmed that the landlord served the 1 month notice dated May 31, 2019 by posting it on the rental unit door on May 31, 2019. The tenant confirmed receipt of the posted notice on May 31, 2019, but was admitted to hospital on June 1, 2019 until June 13, 2019 for a Gall Bladder Operation and subsequent complications. The tenant stated he was not able to file the application until June 11, 2019 with the assistance of a friend. The landlord made no comments.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
  - a. The extension is agreed to by the landlord;
  - b. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

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 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.

In this case, I accept the undisputed evidence of the tenant that upon being served on May 31, 2019, he was admitted into hospital on June 1, 2019 and not released until June 13, 2019. The tenant provided undisputed testimony that he was admitted for a Gall Bladder Operation and was subsequently treated for complications due to an infection. The tenant stated that he was only able to apply for dispute on June 11, 2019 through the assistance of a friend. On this basis, I find that the tenant was unable to apply for dispute within the allowed timeframe due to exceptional reasons. The tenant’s request for more time is allowed.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?  
Is the tenant entitled to an order to cancel the 1 month notice?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that this tenancy began on April 1, 2014 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 1, 2014.

Both parties confirmed that on May 31, 2019, the landlord served the tenant with the 1 Month Notice dated May 31, 2019 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of July 3, 2019 and that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause listed on the notice state:

*In unit #110 K.W., has continued to smoke in his unit after repeated warning letters.*

The landlord states that section 30 of the signed tenancy "Rules and Regulations" state,

*"The tenant agrees to observe the rules and regulations delivered with the tenancy agreement, and such reasonable variations, modifications and additions from time to time made to such rules and regulations by the landlord and posted or communicated to the tenant in writing, and the tenant agrees to require all occupants and guest to observe such rules and regulations and agrees that such rules and regulations form part of the terms of this tenancy agreement."*

The landlord has referred to the "Conditions and Rules of Occupancy for Tenants" which lists the landlord and tenant as the parties, dated April 1, 2014 and signed by the tenant.

Section 9 states, "*Smoking will comply with all government regulations. **All suites rented after 2008 will be non-smoking suites. Prior Tenants will be grandfathered in. Smoking prohibited within 7.5 meters of doorways or within 3 meters of balconies and air intakes.***"

The landlord stated that multiple smoke complaints have been filed by the occupants above and next to the tenant's corner unit. The tenant disputes the landlord's claims

stating that he is not a smoker and that no one has smoked in the rental unit. The landlord stated that upon receiving the complaints from neighboring tenants, the landlord attended the hallway outside of the rental unit and detected smoke. The landlord attended the rental units of the neighboring tenants (who had filed complaints) above and next to the tenant's corner unit. On each occasion the landlord has found smoke to be present in each of the two rental units. The tenant has argued that he has copies of two letters (not submitted into evidence) by the two neighboring tenants who have withdrawn their complaints stating that they were not true. The landlord argued that he was not aware of this claim nor have the two neighboring tenants made this known to him. The landlord also stated as part of responding to the complaints of smoke, the landlord attended the rental unit himself and found an ashtray with cigarette remains next to the window and the smell of smoke in the air within the rental unit.

In support of these claims the landlord has submitted:

Signed Tenancy Agreement dated April 1, 2014

Conditions and Rules of Occupancy for Tenants dated April 1, 2014

1 Month Notice dated May 31, 2019

Proof of Service Document dated May 31, 2019 for 1 Month Notice dated May 31, 2019

A "Notice" dated January 10, 2019 to the tenant re: cigarette smoke complaint

A "Second Notice" dated January 29, 2019 to the tenant re: cigarette smoke complaint

A "Third Notice" dated May 16, 2018 to the tenant re: cigarette smoke complaint

A 2 page letter/log of smoking complaints and logs of units inspected for smoking

A 1 page letter signed by a tenant re: smoke from the tenant's unit which is directly above the tenant

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of both parties that the landlord served the tenant with a 1 month notice dated May 31, 2019 by posting it on the rental unit door on May 31, 2019. The tenant provided testimony that the 1 month notice was received on May 31, 2019. This provides for the 1 month notice to be effective on June 30, 2019, however, the landlord has given extra time until July 3, 2019. Both parties confirmed the contents of the 1 month notice and the details of cause listed.

The landlord has claimed that despite a signed tenancy agreement, the tenant has or has allowed smoking in the rental unit. The landlord has provided undisputed evidence that the signed tenancy agreement does not allow the tenant to smoke in the rental unit. The landlord has also made reference to the “Conditions and Rules of Occupancy for Tenants” signed by the tenant on April 1, 2014. The landlord has also provided evidence of numerous complaints re: smoke coming from the tenant’s unit. The tenant has disputed these claims stating that there are other occupants of the rental property who smoke in the building.

I find based upon the evidence provided that I prefer the evidence of the landlord over that of the tenant. The landlord provided clear and concise testimony that I found to be credible. The landlord provided numerous “smoking” complaints by other occupants of the rental unit who have indicated the source of smoke come from the tenant’s rental unit. The tenant has argued that he is not a smoker, but that the landlord has provided undisputed testimony that he saw an ashtray in the rental unit next to the window and that the smell of smoke could be smelt at that time. The landlord has also provided multiple warning “notices” issued to the tenant and a detailed log by the landlord in their investigation as to the source of the smoke. This was confirmed by the landlord’s agent. The 1 month notice dated May 31, 2019 is upheld. The tenant’s application is dismissed. The landlord is granted an order of possession. As the effective date of the notice has now passed, I order that the order of possession to be effective 2 days after it is served upon the tenants.

### Conclusion

The landlord is granted an order of possession.  
The tenant’s application is dismissed.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 25, 2019

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Residential Tenancy Branch