



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AAT, CNL, LAT, LRE, MNDCT, MT, OLC, PSF, and RR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 30;
- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- more time to make an application to cancel the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 66;
- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 62; and,
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses and cross-examine witnesses. In addition, both parties submitted documentary evidence.

The tenant testified the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on May 17, 2019 which is deemed to have been received by the landlord five days later, on May 22, 2019, under section 90 of the *Act*. The tenant provided the Canada Post tracking number in support of service referenced on the first page of the decision. Based on the undisputed testimony of the tenant, I find the tenant served the landlord with the documents pursuant to section 89 of the *Act*.

*Preliminary Issue: Severance of Portion of Tenant's Application*

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the Two Month Notice.

The tenant's other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the Two Month Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the Two Month Notice and the tenant's application for more time to dispute the Two Month Notice.

*Preliminary Matter: Two Month Notice Submitted by the Landlord*

Neither party submitted a copy of the Two Month Notice as evidence for the hearing. I advised all parties that I would allow the parties to submit a true copy of Two Month Notice served on the tenant as evidence after the hearing until the end of business on Tuesday, July 2, 2019.

The landlord submitted a copy of page one of Two Month Notice after the hearing. However, the landlord did provide a copy of page two or three of the Two Month Notice.

I will consider the document provided by the landlord pursuant to section 3.19 of *Residential Tenancy Branch Rules of Procedure*, since I specifically authorized the submission of the document during the hearing

*Preliminary Matter: Admissibility of the Landlord's Evidence*

During the hearing the landlord referred to evidence which she claimed to have filed before the hearing. The tenant testified that he did not receive any documentary evidence from the landlord. I did not find any documentary evidence from the landlord in the file, other than page one of the Two Month Notice submitted by the landlord after hearing.

*Residential Tenancy Branch Rules of Procedure*, sections 3.15 states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch seven days before the hearing. And furthermore, I obviously cannot consider documents which are not provided at all. Accordingly, I will not consider any documentary evidence from the landlord other than the Two Month Notice.

*Preliminary Matter: Document Submitted the Tenant After the Hearing*

The tenant submitted a document on July 4, 2019. *Residential Tenancy Branch Rules of Procedure*, sections 3.19 state that, "No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator." I did not authorize the submission of any evidence after the hearing other than a true copy of Two Month Notice served on the tenant. Accordingly, the document submitted by the tenant on July 4, 2019 is excluded and I will not consider that document in rendering my decision.

*Issue(s) to be Decided*

Is the tenant entitled to more time to dispute the Two Month Notice pursuant to section 66 of the *Act*?

If so, is the tenant entitled to a cancellation of the Two Month Notice pursuant to section 49 of the *Act*?

If not, is the landlord entitled to an order of possession pursuant to section 55 of the *Act*?

### Background and Evidence

The landlord testified the tenancy started in June 2018. She testified that the rental unit is in the upper portion of a house. She testified that the tenant pays \$400.00 per month in rent. The landlord testified that there is no written tenancy agreement because the parties were friends.

The landlord testified that the Two Month Notice was placed in his mailbox on March 4, 2019 and the notice had a stated move out date of May 31, 2019. The landlord testified that she wanted to move into the rental unit with a friend.

The tenant testified that the landlord did not intend to occupy the rental unit. The tenant testified that the landlord would not be physically able to climb the stairs to the rental unit.

In addition, the tenant testified that he has a fixed term tenancy for 18 months. The tenant testified that he paid \$5,000.00 upfront in advanced rent when he moved in. The landlord denied this.

The tenant filed a previous application to dispute this Two Month Notice on March 20, 2019. The file number for the previous application is referenced on the first page of this decision. On May 10, 2019, the arbitrator in the previous case issued a decision stating that, "Due to a service issue, the Tenant's Application for Dispute Resolution is dismissed, with leave to reapply. This does not extend any applicable time limits under the *Act*." The tenant filed this application to cancel the Two Month Notice on May 16, 2019.

### Analysis

Pursuant to section 47(4) of the *Act*, a tenant has fifteen days after receipt of a notice to end a tenancy for landlord's use to dispute the notice. In this matter, the Two Month Notice was sent to the tenant by depositing the notice in the tenant's mailbox on March 4, 2019. Pursuant to section 90 of the *Act*, the tenant is considered served with the notice three days after the notice was deposited in the tenant's mailbox, being March 7, 2019. Accordingly, the tenants had fifteen days after the effective date of service of March 7, 2019 to dispute the notice, being March 22, 2019. However, the tenants did not file his application for dispute resolution until May 16, 2019. This was after the expiration of the deadline. While the tenant was granted leave to reapply after the

previous hearing, the previous decision explicitly stated that the decision did not extend the tenant's filing deadlines.

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 wilfully 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 tenant's deadline to file a dispute under section 47.

The primary explanation the tenant provided for not filing the application for dispute resolution earlier was that his previous filing was dismissed with leave to reapply. However, as noted above, the previous decision explicitly stated that the decision did not extend the tenant's filing deadlines. Furthermore, the tenant's previous filing was dismissed because of the tenant's failure to properly serve the respondent and *Residential Tenancy Policy Guideline No. 36* specifically states that not paying attention to the correct procedure is not considered an exceptional circumstance. As such, I am not satisfied the tenant has established the existence of exceptional circumstance pursuant to section 66(1) of the *Act* and I dismiss the tenant's request for more time to file their application to cancel the landlord's Two Month Notice.

Section 49(9) 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 tenant did not timely file this application to dispute the landlord's Two Month Notice, I find that the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being May 31, 2019. Accordingly, I deny the tenant's application to cancel the landlord's Two Month Notice.

Section 55 of the *Act* states that a landlord is entitled to an order of possession if the tenant has not timely disputed the notice by making an application for dispute resolution. As stated above, the landlord submitted a copy of page one of Two Month Notice after the hearing. However, the landlord did provide a copy of page two or three of the Two Moth Notice. Without submitting a complete copy of the Two Month Notice, I

am unable to determine that the notice complies with the form and content requirements set forth in section 52 of the *Act*. Accordingly, I do not grant the landlord an order of possession.

### Conclusion

The tenant's applications, other than the tenant's application to cancel the Two Month Notice and the tenant's application for more time to dispute the Two Month Notice, are dismissed with leave to reapply.

The tenant's application to cancel the landlord's Two Month Notice and the tenant's application for more time to dispute the Two Month Notice are denied without leave to reapply.

The landlord is not granted an order of possession.

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 05, 2019

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Residential Tenancy Branch