



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MT, MNDCT

### Introduction

On May 21, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking monetary compensation pursuant to Section 67 of the *Act*.

The Landlord attended the hearing at 9:30 AM; however, the Tenant called into the hearing at 9:41 AM, with S.B. attending as an advocate for the Tenant. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package by placing it under the Landlord’s door, but conflicting testimony was provided on the date that this was done. However, the consistent testimony was that this was not served in a method that complied with the *Act* and it was likely served late. When questioned why he served this package by placing it under the door and likely late contrary to the *Act*, he advised that he was confused by the process. The Landlord advised that she only received the Notice of Hearing package under the door, and this was received on or around June 24, 2019. While I am not persuaded that the Tenant served the Notice of Hearing package in accordance with Section 89 of the *Act*, I am satisfied that the Landlord did receive the Notice of Hearing package, albeit late, and I elected to continue hearing the merits of the Application.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord’s Notice, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- Are the Tenants entitled to be granted more time to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 20, 2018 and rent was currently established at an amount of \$1,100.00 per month, due on the first day of each month. A security deposit of \$500.00 was paid.

The Landlord stated that the Notice was served to the Tenant by posting it on the Tenants' door on or around April 28, 2019. The Notice indicated that the effective end date of the Notice was May 31, 2019.

The Tenant advised that the reason he did not dispute the Notice on time was because he "did not know what was doing" and did not understand that he was required to dispute the Notice within a specific period of time. He advised that he requires more time to dispute the Notice because he suffers from mental health issues, PTSD, anxiety, and that he "shuts down". As well, he stated that the co-tenant works full-time so she could not get to an office to dispute the Notice, and that she suffers from her own mental health issues and stress.

### Analysis

With respect to the Notice served to the Tenant on or around April 28, 2019, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on or around April 28, 2019 by posting it to the Tenants' door. As per Section 90 of the *Act*, the Notice would have been deemed received after three days of being posted to the door. As well, the Tenant acknowledged receiving the Notice on or around April 28, 2019. According to Section 47(4) of the *Act*, the Tenants have 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *"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 is 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."* I find it important to note that this information is provided on the second page of the Notice as well.

As the Tenants were deemed to have received the Notice on or around May 1, 2019, the tenth day to dispute the Notice fell on Saturday May 11, 2019. As such, the Tenants must have made this Application by Monday May 13, 2019 at the latest. However, the undisputed evidence is that the Tenants made their Application on May 21, 2019. As the Tenants were late in making this Application, they requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice "only in exceptional circumstances." When the Tenant was questioned if there were any exceptional circumstances that prevented him or the co-tenant from disputing the Notice within the required time frame, other than the testimony provided, the Tenant did not submit any evidence to substantiate his condition, the condition of the co-tenant, or their inability to dispute the Notice within the required time frame. As well, he did not provide a reason why he could not have had someone else make the Application to dispute the Notice for them if they were unable to themselves.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's testimony and reasons would constitute exceptional circumstances. When reviewing the evidence and testimony before me, I do not find that the Tenant provided reasons for not disputing the Notice on time that may satisfactorily be considered exceptional. As such, I find that there was insufficient evidence that the Tenants had significant issues or exceptional circumstances that prevented them from disputing the Notice on time. Ultimately, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

As the Tenants have paid rent for July 2019, I exercise my authority pursuant to Section 55 of the *Act* to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on July 31, 2019**.

### Conclusion

Based on the above, I dismiss the Tenants' Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on July 31, 2019** after service of this Order on the Tenants. Should the Tenants 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 4, 2019

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Residential Tenancy Branch