



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Keefer Apartments Ltd n/a and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC, MT, FF

### Introduction

This hearing was convened in response to an application for dispute resolution made August 9, 2019 by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order allowing more time to make the application to cancel the notice to end tenancy - Section 66; and
3. An Order for the recovery of the filing fee - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Did exceptional circumstances prevent the Tenant from making its application to dispute a notice to end tenancy for cause within the time allowed?

Is the notice to end tenancy for cause valid?

### Background and Evidence

The following are agreed facts: The tenancy started in 2011 or 2012. Initial rent of \$380.00 was payable on the first day of each month. The rent was increased to \$389.50 as of July 1, 2019. At the outset of the tenancy the Landlord collected \$190.00

as security deposit. On July 22, 2019 the Tenant received a one month notice to end tenancy for cause dated July 22, 2019 (the "Notice"). The reason stated on the Notice is that the Tenant has been repeatedly late paying rent. The Notice sets out details of the Tenant's paying late rent "countless times". The Tenant provided a copy of the Notice as evidence for this dispute.

The Landlord states that the Tenant paid rent on the following dates: July 2, June 5, May 8, March 8, February 4 and January 15, 2019. The Landlord states that rent for October 2019 has been paid and a receipt was issued for "use and occupancy only". If the Tenant's application is dismissed the Landlord agrees to an order of possession for October 31, 2019.

The Tenant states that it cannot recall when rent was paid for the above months and that other than the May and February 2019 payments, Landlord GS agreed to accept late rent payments. The Landlord states that the Tenant never contacted the Landlord in advance of the rent due date to obtain permission to pay the rent late and that no specific consent was given for a late rent payment as the Landlord only collected the rents when they were paid.

The Tenant states that on the same day and shortly after receiving the Notice the Tenant flew to another province for work. The Tenant states that the Landlord was aware that the Tenant was leaving. The Tenant states that while out of province the Tenant did not have internet access other than through its phone. The Tenant states that although attempted, the Tenant could not navigate the RTB web site with its phone. The Tenant states that it could not obtain any help to make its application within the time allowed. The Tenant states that it returned home on either August 6 or 7, 2019. The Landlord states that it is not aware of the Tenant going anywhere.

### Analysis

Section 47(4) of the Act provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 66(1) of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances. The Tenant did not provide any supporting evidence of the flight or work requirements. The Landlord's evidence is that they were not aware of the Tenant going anywhere. The Tenant's evidence that there was no person who could assist the Tenant in making its application within the time required did not hold a ring of truth. For these reasons I find on a balance of probabilities that exceptional circumstances did not prevent the Tenant from making its application on time. I would note that even if the Tenant's trip out of province did amount to exceptional circumstances, given the Tenant's vague evidence on when rent payments were made, I consider the Tenant's evidence to lack reliability and therefore prefer the Landlord's overall evidence in finding on a balance of probabilities that the Tenant has been repeatedly late paying rent. For these reasons, I find that the Tenant is not entitled to additional time and that the Notice is valid for its stated reason. I dismiss the Tenant's application.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of possession as agreed for October 31, 2019.

### Conclusion

The Tenant's application is dismissed.

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on October 31, 2019.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 11, 2019

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Residential Tenancy Branch