



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MT CNL

### Introduction

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

- More time to file their application pursuant to section 66; and
- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by their agent.

As both parties were present service was confirmed. The landlord confirmed receipt of the tenant's materials and testified that they had not served any materials. Based on the evidence I find that the landlord was served with the materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to more time to file the application to dispute the landlord's 2 Month Notice? Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### Background and Evidence

The rental unit is a basement suite in a detached home. The landlord occupies the other portion of the building. The landlord issued a 2 Month Notice dated May 1, 2019 which the tenant confirms was received on or about May 7, 2019. The notice provides an effective date of July

31, 2019 and the reason provided on the notice for the tenancy to end is that the landlord or a close family member intends to occupy the rental unit. The landlord provided no information on who the family member who would occupy the rental unit would be saying it was nobody's business and they were free to rent it out if they chose.

The parties agree that the tenant has paid full rent to the date of the hearing in the amount of \$650.00 monthly. The tenant submitted copies of receipts from the landlord where they have handwritten their confirmation that they have received the full amount for rent.

The tenant submits that they have ongoing health issues which required hospitalization, treatment, surgeries and recovery which prevented them from filing their application to dispute the 2 Month Notice until August 1, 2019. The tenant submitted into evidence copies of medical records, discharge summaries, and doctor's notes as evidence of their ongoing medical issues.

### Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. However, subsection 66(3) provides that a time limit to make an application for dispute resolution to dispute a notice to end tenancy must not be extended beyond the effective date of the notice.

In the present case the 2 Month Notice dated May 1, 2019 has an effective date of July 31, 2019. The tenant filed their application for dispute resolution on August 1, 2019, after the effective date of the notice.

While the tenant has provided evidence in support of their circumstances which delayed their filing, I find that I have no ability to extend the deadline for the tenant's filing of their dispute of the 2 Month Notice beyond its effective date. As such, I dismiss the tenant's application seeking an extension of time to file their application.

Section 49(8) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has not met their deadline and are conclusively presumed in accordance with section 49(9) of the *Act* to have accepted that the tenancy ends on the effective date of the notice.

However, the parties confirm that the landlord has accepted the full rent from the tenant for this tenancy. The landlord confirmed that they have been paid for the months of July, August and September, 2019.

Residential Tenancy Policy Guideline 11 discusses the issue of waiver of a Notice to End Tenancy:

*A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.*

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- whether the receipt shows the money was received for use and occupation only*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.*

In the present case the receipts submitted into evidence by the tenant shows that the landlord has accepted the rent payments. The landlord has provided no indication that the payments have not been accepted as rent and only for "use and occupancy". I find that the landlord has ample opportunity to indicate on the handwritten confirmation of payments that the payment was accepted on a limited basis if that were the intention.

I find on a balance of probabilities that this ambiguity in the landlord's conduct amounts to a waiver of the landlord's right to seek an Order of Possession.

I find that the landlord waived their right to pursue an Order of Possession. I find that the landlord reinstated this tenancy by accepting full rent payments from the tenant for the months of July, August and September, 2019, after the effective date of the 2 Month Notice.

For the above reasons, while I have dismissed the tenant's application to cancel the 2 Month Notice, I find that the landlord has waived their right to an Order of Possession based on the 2 Month Notice and have reinstated this tenancy. Therefore, I decline to issue an Order of

Possession and find that the 2 Month Notice has been cancelled. This tenancy will continue until ended in accordance with the Act.

Conclusion

The tenant's application is dismissed without leave to reapply.

The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

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: October 4, 2019

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Residential Tenancy Branch