



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **AAT CNL CNR DRI FFT LAT**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to be allowed more time to dispute a notice to end tenancy, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on October 2, 2019 , to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property, to cancel an additional rent increase, to be allowed to change the locks to the rental unit and to recover the cost of the filing fee.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In this case the parties were at a prior hearing and the Two Month Notice to End Tenancy for Landlord’s Use was reviewed and is under consideration. As that matter is before a different Arbitrator, I decline to hear that matter as that matter has been heard.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to be allowed more time to dispute a notice to end tenancy and if granted the tenant’s application to cancel the Notice. I will, therefore, only consider the tenant’s request to be allowed more time to dispute a notice to end tenancy and the Notice. The balance of the tenant’s application is dismissed, with leave to reapply.

### **Issue to be Decided**

Should the tenant be granted more time to dispute a notice to end tenancy?  
Should the Notice be cancelled?

### Background and Evidence

The tenant testified that they received the Notice on October 2, 2019, with an effective date of October 16, 2019. The tenant filed their application on the effective vacancy date stated in the Notice.

The tenant submits in their written application that they did not dispute the notice to end because,

” This application is being filed late because I have a disability that keep me bed ridden for long period of time, so I was unable to hire a lawyer in the time frame.

[Reproduced as written]

Filed in evidence, is a letter dated September 22, 2019, and text messages between the parties.

The letter written by the tenant on September 22, 2019, reads in part.

“Damage to the ceiling still exists and has been documented along with the rest since incident last September with AK (lawyer). ... I know you don't have it in you to dispute this.. If so Its case is open with tenancy board and **my lawyer & I are ready.**”

[Reproduced as written]

**[My Emphasis Added.]**

The text message sent from the tenant to the landlord on October 2, 2019, reads,

“I won't be going anywhere and I WONT be paying rent”.

[Reproduced as written]

The text message sent from the tenant to the landlord on October 5, 2019, reads,

“Now (landlord's name removed) n **you get to fight myself.. My lawyer is my witness**”

[Reproduced as written]

[My Emphasis added.]

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

#### **Director's orders: changing time limits**

**66** (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59

(3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* 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.

#### **Emergency repairs**

**33** (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

In this case, I accept the tenant's written submission that they have a disability. However, I do not accept that the tenant was bed ridden, and unable to obtain a lawyer or a third party to assist them to file their application within the statutory time limit.

The evidence supports the tenant had already contacted their lawyer, who was named in the letter dated September 22, 2019. The letter informed the landlord that they would not be paying rent for October 2019, due to compensation they felt they were entitled to receive for an incident that occurred in September of 2018.

Further, the text message of October 5, 2019, which is after the Notice was received the tenant is instigating a fight with the landlord, and again confirms their lawyer. This does not support that the tenant was bed ridden to any degree that would prevent them from contacting their lawyer, that they had already confirmed they had hired.

Based on the above, I am not satisfied that the tenant had an exceptional circumstance that prevented them from filing their application within the statutory time limit.

In addition, section 66 (2)(b) of the Act states, that despite section 66(1) of the Act that the director may extend the time limit established in section 46(4)(a) for a tenant to pay overdue rent only if the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

In this case, the flood occurred in September 2018, over 1 year ago. The tenant did not pay any money to make repairs to the residential property and waited over a year to withhold rent as they believed they were entitled to compensation for damages to their personal belongings. This is unreasonable.

This is not an emergency repairs as defined in section 33 of the Act. This was damage caused to the tenant's personal items from a flood that occurred a year earlier. The landlord is not responsible for damage to the tenant's personal property caused by flood, fire or earthquake. The tenant is required to protect their own belonging by obtaining tenant's insurance.

Further, the tenant could have obtained an order of the director before they decided to withhold the rent, which they did not do. Therefore, I dismiss the tenant's application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

### **Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

At the hearing, the landlord agreed to extend the effective date of the Notice to November 30, 2019.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at **1:00 PM on November 30, 2019**. The tenant must be served with a copy of this Order. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's' application is dismissed. The landlord is 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: November 12, 2019

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Residential Tenancy Branch