



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MT

### Introduction

This hearing dealt with a tenant's application to dispute a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice") and an extension of time to make the application.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed that the parties had exchanged their respective hearing documents upon each other. Although the method of service was not in accordance with the requirements of the Act, both parties confirmed receipt of the documents and did not take issue with the method of service. Therefore, deemed the parties sufficiently served pursuant to the authority afforded me under section 71 of the Act.

### Preliminary Issue – request for extension

Under section 49(5) of the Act, a tenant in receipt of a 2 Month Notice has 15 days to file an Application for Dispute Resolution to dispute the 2 Month Notice, otherwise the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the notice.

The 2 Month Notice was served upon the tenant in person on November 26, 2019 meaning the tenant had until December 11, 2019 to file an Application for Dispute Resolution to dispute it. This application was filed on December 12, 2019.

Section 66 of the Act provides the Director the authority to extend a filing deadline in “exceptional circumstances”.

I heard that the tenant has intellectual and developmental disabilities and relies upon the services of a mental health professional team, including the tenant’s representative who appeared for the hearing. The tenant’s representative prepared a letter in response to the 2 Month Notice on December 6, 2019 but did not file the Application for Dispute Resolution on behalf of the tenant until December 12, 2019. The tenant’s representative explained that the Application for Dispute Resolution was filed late because he only works certain number of days per week and has many clients that require his support. The tenant’s representative pointed out that the late filing was no fault of the tenant but also acknowledged that the representative’s failure to meet the filing deadline was not due to an “extraordinary circumstance”.

Based on what was presented to me, I was of the position that an “extraordinary circumstance” did not prevent the filing of this Application for Dispute Resolution within time, especially when I consider the representative’s initial letter was written on December 6, 2019, or five days before the filing deadline. As such, I denied the request for an extension.

I noted that the tenant’s Application for Dispute Resolution did not appear to challenge the reason the landlord was ending the tenancy or that the notice was otherwise invalid due to its form or content; but that it appeared the tenant needed more time to vacate the rental unit given the tenant’s special needs. With a view to achieving a mutually satisfactory outcome in this matter I asked the parties to try to consider a mutually agreeable vacate date.

The parties were able to reach a mutually agreeable vacate date and I have recorded that agreement by way of this decision and the Order that accompanies it.

#### Issue(s) to be Decided

What are the terms of the mutual agreement?

### Background and Evidence

During the hearing, the parties mutually agreed upon the following:

1. The effective vacate date of the 2 Month Notice is extended to read February 20, 2020 and the tenancy shall come to an end no later than that date.
2. The landlord shall be provided an Order of Possession effective at 1:00 p.m. on February 20, 2020.
3. It is recognized that the tenant has paid rent for January 2020 and the landlord is in receipt of a rent cheque from the Ministry for the month of February 2020. The landlord shall deposit the rent cheque for February 2020 and provide to the tenant a refund cheque for the compensation she is entitled to receive under section 51(1) of the Act by the end of the tenancy.

### Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and I make the term(s) an Order to be binding upon both parties.

Having reviewed the 2 Month Notice and being satisfied it is in the approved form and appears duly completed, and in recognition of the mutual agreement, I provide the landlord with an Order of Possession effective at 1:00 p.m. on February 20, 2020.

As provided under section 50 of the Act, a tenant in receipt of a 2 Month Notice is at liberty to end the tenancy earlier than the effective date on the 2 Month Notice by giving the landlord 10 days of advance written notice. That provision remains available to the tenant in this case.

Conclusion

The tenancy shall end pursuant to the 2 Month Notice dated November 26, 2019 except the effective date has been amended, by mutual consent, to February 20, 2020. The landlord is provided an Order of Possession effective at 1:00 p.m. on February 20, 2020.

The tenant remains entitled to receive compensation payable under section 51(1) of the Act that the landlord must provide to the tenant no later than the end of the tenancy.

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: January 24, 2020

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Residential Tenancy Branch