



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF, MT, CNC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the notice of hearing package by posting it to the rental unit door on January 5, 2020. The landlord's agent (the landlord) stated that the tenants were served with the submitted documentary evidence in person on February 21, 2020. The tenant, J.D. confirmed receipt of the submitted documentary evidence except for the noted photograph submission. Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence on February 17, 2020 via their mailbox.

I accept the affirmed testimony of both parties and find that both parties have been properly served with the notice of hearing package(s) and the submitted documentary evidence (except the submitted photographs) as per sections 88 and 89 of the Act.

A finding on the landlord's photographic evidence shall be determined during the hearing when referenced by the landlord.

Both parties are deemed sufficiently served as per section 90 of the Act.

### Preliminary Issue(s)

At the outset, the applications of both parties were clarified. The landlord seeks an order of possession as a result of a 1 month notice and recovery of the filing fee. The tenants seek more time to make an application to cancel the 1 month notice and if allowed, to request an order to cancel the 1 month notice for cause and recovery of their filing fee.

The tenants provided written details which state that the 1 month notice was picked up at the post office on December 26, 2019 and argues that they have filed within 10 days of that date.

The landlord's agent provided undisputed affirmed testimony that the 1 month notice dated December 16, 2019 was served to the tenant via Canada Post Registered Mail on December 16, 2019. The landlord has provided as confirmation of service the Canada Post Customer Receipt Tracking number (noted on the cover of this decision).

The tenant argued that the notice to pick up the Canada Post package was placed at the front door near the mailboxes and as such, the tenant was not made aware of the notice until December 25, 2019. The tenant stated that she "thought it was a Christmas present" and as such did not pick it up sooner.

Section 66 of the Act sets out the circumstances in which an arbitrator can extend time limit established by the Act:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) 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.
- (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

Residential Tenancy Policy Guideline, “36. *Extending a Time Period*” provides me with guidance as to the interpretation of section 66:

The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word exceptional implies that the reason for failing to do something at the time required is strong and compelling. Furthermore, as one Court noted, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

I find that the tenant is deemed served as per section 90 of the Act with the 1 month notice via Canada Post Registered Mail on December 16, 2019, 5 days after service by the landlord on December 21, 2019.

In this case, I find that the tenant's reason for not picking up the Canada Post Registered Mail package fails to meet the Residential Tenancy Branch reasoning as exceptional. The circumstances described by the tenant are not strong or compelling as to a reason for not picking up the package. The tenant's primary reasoning was that the notice was posted near the front door by the mail boxes and that the tenant did not frequently use this entrance. On this basis, I find that the tenant has failed to provide sufficient evidence of an exceptional reason to allow for more time to make an application for dispute. As such, the tenant's application is dismissed without leave to reapply.

Both parties were advised that as the tenant's application was dismissed and that as such, section 47 (5) states in part that a tenant who has received a notice under this section who does not make an application for dispute resolution within 10 Days after the tenant receives the notice is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

The merits of the one month notice were not addressed.

Discussions resulted in the landlord's request to have the effective end of tenancy date noted for the order of possession to be within 2 days after the tenant is served with an exception. The exception is if the landlord can confirm the March 2020 rent payment, the landlord shall not enforce the order of possession until March 31, 2020.

The landlord's application for an order of possession is granted.

The landlord is also granted a monetary order for recovery of the \$100.00 filing fee.

These orders must be served upon the tenant. Should tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: March 02, 2020

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Residential Tenancy Branch