



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC

Introduction

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

Both parties attended the hearing via conference call and provided testimony.

At the outset, extensive discussions were made with both parties concerning the tenant's request for more time to file an application to dispute the notice to end tenancy.

The notice was received December 31, 2019 and the tenant filed the application for dispute on January 17, 2020. The applicant has provided the following reason as the serious and compelling reason why the application was submitted late as:

Son has mental illness going to see Dr. that day.
Son does not live in my household.
Do not smoke in apartment.

The application filed was made 17 days after being received and the Act allows for 15 days to file an application for dispute. As such, the applicant was late by approximately 2 days in filing the application.

The tenant clarified that she was trying to get an advocate, but that there was no specific reason why she could not file an application to dispute the notice within the allowed timeframe.

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.

In this case, the applicant has clarified that the reason given for more time was that she was trying to obtain the services of an advocate and that there were no other specific reasons why she could not file the application for dispute within the allowed 15 day timeframe. As such, I find that the tenant has no provided sufficient evidence of a compelling or exceptional reason to extend the time limit. The tenant’s request for more time is dismissed.

Pursuant to section 55 (4) of the Act, the tenant having failed to file an application to dispute the notice within the allowed timeframe is conclusively presumed to have accepted that the tenancy was at an end. The landlord is granted an order of possession to be effective 2 days after service upon the tenant as the effective end of tenancy date has now passed.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 19, 2020

Residential Tenancy Branch