



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BROADSTREET PROPERTIES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: MT CNC

### Introduction

This hearing was held based on the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to cancel a 1 Month Notice to End Tenancy for Cause dated January 27, 2020 (1 Month Notice) and for more time to make an application to dispute a notice to end tenancy.

The tenants and an agent for the landlord LL (agent) attended the teleconference hearing. The hearing process was explained to the parties, evidence was reviewed, and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As there were no proven evidentiary issues, I find the parties were served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

Firstly, the parties consented at the outset of the hearing to replace the name of the landlord agent as the respondent to the landlord name BPL, which was amended pursuant to section 64(3)(c) of the Act.

Secondly, the parties confirmed their email addresses during the hearing. The decision will be emailed to the parties and any responsive orders will be emailed to the appropriate party for service on the other party.

### Issues to be Decided

- Have the tenants provided sufficient evidence to support an extension of time to make an application to cancel a notice to end tenancy?
- If yes, should the 1 Month Notice be cancelled?

### Background and Evidence

A copy of the written tenancy agreement was not submitted in evidence. The parties agreed that the tenancy began on June 1, 2019 and that monthly rent of \$1,248.00 was due on the first day of each month. That amount does not include monthly parking.

The tenants confirmed receiving the 1 Month Notice dated January 27, 2020 on the same date, January 27, 2020. The effective vacancy date listed on the 1 Month Notice is January 27, 2020, which automatically corrects under section 53 of the Act to February 29, 2020. The tenants applied to dispute the 1 Month Notice on February 28, 2020. The tenants stated that their reason for wanting an extension of time to make an application to cancel the 1 Month Notice is that they were taking a Health Care Assistant course and were too busy. The co-tenant stated that they could not apply either as they were too busy with work. The tenants received both pages of the 1 Month Notice, which was submitted in evidence and is signed, dated and listed the one cause as repeated late payment of rent and the details of the late payments in the “Details of Cause” section on the 1 Month Notice. The tenants continue to occupy the rental unit.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Tenant’s request for extension of time to make an application to cancel a Notice to End a Tenancy** –The tenants confirmed that they received the 1 Month Notice dated January 27, 2020 on January 27, 2020. The 1 Month Notice clearly indicates on page two of the 1 Month Notice, “You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.” As the tenants received the 1 Month Notice on January 27, 2020, the tenth day would be Thursday, February 6, 2020. The tenants did not file their application until February 28, 2020.

Section 66 of the Act applies and states that a time limit may be extended for exceptional circumstances and Residential Tenancy Branch Policy Guideline #36 –

Extending a Time Period, indicates that a party not knowing the applicable law or procedure is not a considered “exceptional” circumstances to justify an extension of time to make an application to cancel a Notice to End a Tenancy. Based on the above, I **dismiss** the tenants’ request for an extension of time to make an application to cancel a Notice to End Tenancy due to insufficient evidence. I find that taking a course or being busy with work are not exceptional circumstances under the Act.

As the tenants’ application for more time to make an application has been dismissed, I find it is not necessary to consider the merits of the 1 Month Notice and only determine if the 1 Month Notice complies with section 52 of the Act. The 1 Month Notice does comply with section 52 of the Act as it is signed, dated and filled out as required. The only change to the 1 Month Notice is made automatically under section 53 of the Act and that is the effective vacancy date, which corrects to February 29, 2020.

I also note that section 47(5) of the Act applies and states:

47(5) If a tenant who has received a notice under this section **does not make an application for dispute resolution** in accordance with subsection (4), the tenant

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**  
**(b) must vacate the rental unit by that date.**

[Emphasis added]

Based on the above, as the tenants did not dispute the 1 Month Notice on time, I find the tenants were conclusively presumed to have accepted that the tenancy ended on the corrected date of February 29, 2020. Therefore, I find the tenancy ended February 29, 2020.

I **dismiss** the tenants’ application in full as the tenants did not apply to dispute the 1 Month Notice within the permitted 10 day timeline under the Act. I do not find it necessary to consider the 1 cause listed in the 1 Month Notice as a result.

Section 55 of the *Act* applies and states:

#### **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.**

[Emphasis added]

Given the above and considering that I have found that the 1 Month Notice complies with section 52 of the Act, **I grant** that the landlord an order of possession effective **five (5) days after service on the tenants**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that court.

I also note that give the current State of Emergency due to COVID-19, that *Ministerial Order M089* applies and can be found at:

[http://www.bclaws.ca/civix/document/id/mo/mo/2020\\_m089](http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089)

I have used 5 days instead of 2 days for the order of possession due to *Ministerial Order M089*.

### Conclusion

The tenants' application has been dismissed without leave to reapply.

The landlord has been granted an order of possession effective five (5) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on February 29, 2020.

*Ministerial Order M089* applies and should be read in conjunction with this decision. The link has been included above.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 5, 2020

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Residential Tenancy Branch