



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MT, CNC, FF

### Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On April 6, 2020, the Landlord applied for an order of possession for the rental unit based on the issuance of a One Month Notice to End Tenancy for Cause.

On April 9, 2020, the Tenants applied for more time to make an application to cancel a notice to end tenancy and to cancel a One Month Notice to End Tenancy for Cause.

The matter was set for a conference call hearing. The Landlords and Tenant was present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. The Landlords and Tenant provided affirmed oral testimony and an opportunity to make submissions during the hearing.

### Preliminary and Procedural Matters

The parties were offered an opportunity to settle the matter on their own terms pursuant to section 63 of the Act; however, a settlement agreement could not be reached.

### Issues to be Decided

- Should the Tenants be granted more time to dispute the One Month Notice?
- Are the Tenants conclusively presumed to have accepted that the tenancy ended on the effective date of the notice?
- Are the parties entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlords and Tenant testified that the tenancy began on July 15, 2017 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,300.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a security deposit of \$650.00.

The rental unit is a self contained one bedroom home located on the rental property.

The Landlord testified that the Tenants were served with a One Month Notice to End Tenancy dated March 25, 2020. The reasons for ending the tenancy provided within the One Month Notice are:

*Tenant has allowed an unreasonable number of occupants in the unit /site  
Tenant or a person permitted on the property by the Tenant has:*

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Notice provides that the date a person receives documents is what is used to calculate the time to respond.

The Tenant testified that she received the One Month Notice on March 25, 2020. The Tenant disputed the One Month Notice on April 9, 2020.

The Tenant had until April 4, 2020 to dispute the Notice. Since the April 4, 2020 is a Saturday, the tenant had until the next business day, April 6, 2020 to dispute the Notice.

The Tenants application to dispute the One Month Notice to End Tenancy for Cause was late.

#### More Time to Make an Application

The Tenant requested more time to to make an application to cancel a notice to end tenancy.

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances.

Residential Tenancy Policy Guideline # 36 provides information to determine what qualifies as an exceptional circumstance:

***Exceptional Circumstances***

*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 very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.*

The Tenant was asked to provide reasons why she could not dispute the One Month Notice within 10 days of receiving the Notice.

The Tenant testified that she works in healthcare and was working overtime. The Tenant provided the following testimony which I have summarized:

- She was working overtime hours due to the ongoing covid crisis.
- Her work entails providing one on one care to a person with medical / respiratory issues.
- She was forced to work and due to her long hours, she needed to get sleep.
- She does not have anyone who could apply for dispute resolution on her behalf.

The Tenant testified that she called the Residential Tenancy Branch ("the RTB") and was provided information to dispute the Notice at a Service BC location. The Tenant could not recall that date that she called the RTB.

**Analysis**

I have considered the legislation and I am guided by the RTB policy guideline. I have considered whether the Tenants reason for applying late is strong and compelling. While I accept that the covid crisis may have presented a situation where she needed to work overtime as a care-giver, I find that her reasons do not amount to an exceptional circumstance. The tenant did not provide testimony that she worked every day during the period the where the Notice could be disputed. Furthermore, there was no

explanation why she could not have disputed the Notice during work or after work at some point during that period of time. Her explanation was not persuasive that she was not able to dispute the Notice at some point between March 25, 2020 and April 6, 2020.

The One Month Notice provides clear information on the time limits and the conclusive presumption that the tenancy ends if the Notice is not disputed within 10 days.

After considering the evidence before me, I dismiss the Tenant's request for more time to make an application to dispute the One Month Notice. The Tenant's Application to cancel the One Month Notice to End Tenancy for Cause dated March 25, 2020 is dismissed.

Under section 55 of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. The effective date of the One Month Notice is April 30, 2020.

I find that the One Month Notice issued by the Landlords complies with the requirements for form and content. The Landlords are entitled to an order of possession for the rental unit after service on the Tenants. The Landlords agreed at the hearing for the order of possession to be effective at the end of June 2020 to give the Tenant additional time to move.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlords were successful with their application for an order of possession. I authorize the Landlords to retain the amount of \$100.00 from the security deposit.

### Conclusion

The Tenant's application for more time to dispute a notice to end tenancy was not successful. The Tenants application is dismissed.

The Landlords application for an order of possession based on an undisputed notice to end tenancy is successful. The tenancy is ending. The Landlords are granted an order of possession effective at 1:00 pm on June 30, 2020 after service on the Tenants.

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: May 28, 2020

---

Residential Tenancy Branch