



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEWTON KINSMEN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Code: CNC-MT

### Introduction

The tenant seeks an order to cancel a One Month Notice to End Tenancy for Cause ("Notice"), under section 47 of the *Residential Tenancy Act* ("Act"). In addition, the tenant applied for more time to dispute the Notice under section 66 of the Act.

The tenant filed an application for dispute resolution on September 11, 2020 and a hearing was held on November 6, 2020. The tenant and the landlord's representative ("landlord") attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised.

### Issue

1. Is the tenant entitled to more time to dispute the Notice?
2. If yes, is the tenant entitled to an order cancelling the Notice?
3. If the tenant is not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession?

### Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is reproduced below.

The receipt of the Notice by the tenant was dealt with as a preliminary matter. A copy of the Notice was tendered into evidence, and which indicated that it was served on the tenant by being posted on the door. The Notice, which was signed and dated by the landlord's representative on August 25, 2020, also listed several grounds (on page 2) under which the tenancy was being ended.

The tenant testified that she received the Notice on or about August 26 or August 27, 2020. She could not recall the specific date but was fairly certain that it was on one of those two dates. It was not until September 11, 2020, or fifteen days after she received the Notice, that the tenant filed an application for dispute resolution disputing the Notice. While the tenant submitted a written explanation as to how she was taking care of her ailing mother (and, I must express my condolences to the tenant for her loss), the series of events did not themselves appear to prevent the tenant from filing an application for dispute resolution within ten days.

Having heard the tenant's testimony regarding the details of her receiving the Notice, I did not need to hear further regarding the grounds. I explained to the parties that the Notice, having not been disputed within the ten days, becomes effective and that the landlord is entitled to an order of possession. I asked the parties about when the order of possession ought to go into effect. The tenant committed to paying the rent for November 2020 to the landlord no later than 3:00 PM on November 6, 2020, in which case the landlord agreed to permit the tenant to remain in the rental unit until November 30, 2020 at 1:00 PM.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 47(5) of the Act states that

(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.

The Notice was a One Month Notice to End Tenancy for Cause, which is, and was, issued under section 47 of the Act. Section 47(4) of the Act states that "A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice."

As the tenant did not make an application for dispute resolution, she is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice (that is, September 30, 2020). However, the tenancy end date is extended per below.

Section 66(1) of the Act permits an arbitrator to extend a deadline or

[ . . . ] a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

While the tenant was undoubtedly immersed in having to care for and deal with her mother's rapidly declining health, there is no evidence before me to find that the circumstances were exceptional in such a manner that prevented the tenant from applying for dispute resolution within the required ten-day period.

For this reason, I am unable to extend the time limit in which the tenant may dispute the Notice. The Notice is in effect.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the facts, pursuant to sections 47 and 55 of the Act I grant an order of possession to the landlord. This order shall go into effect at 1:00 PM on November 30, 2020.

However, should the tenant not pay the full rent to the landlord by 3:00 PM on November 6, 2020, the landlord is entitled to an alternative order of possession which shall go into effect two (2) days after service upon the tenant.

Both orders of possession are issued to the landlord in conjunction with this decision.

Conclusion

I dismiss the tenant's application.

I grant the landlord an order of possession, which must be served on the tenant, and, which is effective at 1:00 PM on November 30, 2020. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

Alternatively, subject only to the exception whereby the tenant does not pay rent as agreed to, the landlord is entitled to an order of possession, which must be served on the tenant and which goes into effect two (2) days after service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: November 6, 2020

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Residential Tenancy Branch