



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding The Prince Motel  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNC-MT**

### 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; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenant attended, assisted by their advocate and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The tenant gave evidence that they served the landlord with the notice of application and evidence by registered mail sent on March 19, 2021. The tenant submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenant's materials on March 24, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an extension of time to file their application to dispute the 1 Month Notice?

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant gave undisputed evidence regarding the following facts. The tenant has been residing in the rental unit under the tenancy agreement for approximately 15 years. The tenant was served with a 1 Month Notice dated February 24, 2021 on or about that date. The tenant filed an earlier application to dispute the 1 Month Notice on March 8, 2021 under the file number on the first page of this decision. The tenant testified that the earlier application could not be completed as the system would not allow the tenant to upload their financial information for a fee waiver.

The tenant, with the assistance of their advocate filed the present application on March 15, 2021 after the initial application could not be completed.

### Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 47(4) of the *Act* provides that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present case the tenant testified that they received the 1 Month Notice on February 24, 2021. The tenant therefore, had 10 days from that date, until March 6, 2021 to file an application to dispute the Notice. As March 6, fell on a date that the Branch is not open the deadline fell to the next date when the Branch is ordinary available, March 8, 2021. The undisputed evidence provided by the tenant and indicated in the records of the Branch are that the tenant initially filed an application to dispute the 1 Month Notice on March 8, 2021 and filed their subsequent present application on March 15, 2021.

I accept the evidence of the tenant that the Residential Tenancy Branch dispute resolution system did not allow them to complete their application initiated on March 8, 2021. I find the undisputed testimony of the tenant and their advocate as to the steps they took and the difficulties they faced with the dispute resolution system to be cogent, believable and reasonable. I further note that the tenant filed a subsequent application on March 15, 2021, at their earliest opportunity when the system failed to process the initial application.

I find the circumstances faced by the tenant to be reasonably described as extraordinary. I find that there is a plethora of persuasive evidence by way of the Branch records and the testimonies to demonstrate that the tenant took all reasonable steps in attempting to file and complete an application within the statutory deadlines. I find that the delay in filing an application was not due to the tenant but the dispute management system which failed to properly process the tenant's initial application and payment of fees. Accordingly, I find that the tenant is entitled to an extension of time to file their application to dispute the 1 Month Notice.

When a tenant makes an application to dispute a Notice to End Tenancy the onus shifts to the landlord to prove on a balance of probabilities that the tenancy should end for the reasons cited on the notice.

The landlord failed to attend the hearing despite being deemed served pursuant to the *Act*. The landlord did not attend to make any submissions and have not submitted any documentary materials in support of the 1 Month Notice. Accordingly, I find that the landlord has not met their evidentiary onus and allow the tenant's application to dispute the 1 Month Notice.

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The tenant's application is granted. The 1 Month Notice is cancelled and of no further force or effect.

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: June 22, 2021

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Residential Tenancy Branch