



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AVANETS SENIOR CITIZENS' HOUSING SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC-MT, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order cancelling the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord;
- an order extending the time to file an application disputing the Notice issued by the landlord; and
- to recover the cost of the filing fee.

The tenant and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Both parties confirmed they were not recording the hearing.

The tenant was informed that the matter of his request for more time to file the application would be the first issue addressed in the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

### Preliminary and Procedural Matters-

The agent submitted evidence that she was not the landlord, but rather the administrator for the landlord. As a result, I have amended the tenant's application to

list the administrator as agent and included the name of the landlord as listed in the written tenancy agreement, for any resulting orders.

### Issue(s) to be Decided

Should the tenant be granted more time to apply to cancel the landlord's Notice and, if so, should the Notice be cancelled?

### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of August 1, 2016.

The subject of this dispute is the One Month Notice to End Tenancy for Cause issued to the tenant. The Notice was dated July 12, 2021 and listed an effective move-out date of August 31, 2021.

The causes listed on the Notice were:

- the tenant or a person permitted on the residential property by the tenant has;
  - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk.
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord wrote on the Notice and filed a separate witnessed document that the tenant was served on July 12, 2021.

In his application filed on August 17, 2021, the tenant confirmed that he received the landlord's Notice on July 12, 2021.

In support of his request to extend the time to file an application in dispute of the Notice, the tenant said that he was in a deep state of shock and that when he called the RTB, he could not speak to anyone. The tenant submitted that he was stunned and had been

under stress due to lack of sleep. The tenant said that he finally just “gave up” on the Notice and described that he felt like he was in a coma.

The agent said that the tenant contacted him on July 13, 2021, by email and informed the agent he would be contacting a lawyer.

### Analysis

Based on the documentary and oral evidence provided, and on a balance of probabilities, I find the following.

Section 47 of the Act authorizes a landlord to seek to end a tenancy for a variety of reasons by providing a tenant with a notice to end tenancy that complies with section 52 of the Act.

The One Month Notice provided information to the tenant, which explained that the tenant had the right to dispute the Notice **within 10 days** by filing an application for dispute resolution at the Residential Tenancy Branch online, in person at any Service BC Office or by going to the RTB office in Burnaby in dispute of the Notice.

The Notice also explains that if the tenant did not file an application to dispute the Notice within the required time limit, 10 days, then the tenant is **presumed** to have accepted the end of the tenancy and must move out of the rental unit by the effective date of the Notice. These instructions are provided in sections 47(4) and 47(5) of the Act.

On the basis of the tenant’s own application, supported by the landlord’s evidence, I find that the tenant was served and received the One Month Notice to End Tenancy, dated July 12, 2021, on July 12, 2021. Therefore, the tenant had until **July 22, 2021**, to file his application and he did not until **August 17, 2021**.

As this is significantly more than 10 days after he received the Notice, I find that the tenant did not file his application to dispute the Notice within the timeline established by section 47(4) of the Act.

Section 66(1) of the Act authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy only in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated timelines is very

strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the tenant was hospitalized for an extended period after receiving the Notice.

The tenant did not provide an explanation in his application itself as to why he was unable to file an application for dispute resolution within 10 days of receipt. However, the tenant testified that he was in shock and felt like he was in a coma, and ultimately just gave up on the Notice.

In my view, being shocked by receiving a Notice to end a tenancy is not an exceptional circumstance. Further, I find the tenant failed to provide an explanation as to why he could not speak to someone at the RTB, although the implication was that no one answered the telephone. I do not find that statement reasonable or believable.

If the tenant was unable to act on the Notice due to a medical condition, I would expect the tenant to provide medical evidence to prove that was the case. However, no evidence was filed.

For these reasons, I find that the reasons provided by the tenant for not disputing the Notice within 10 days of receiving it are neither strong nor compelling. I therefore **dismiss** the tenant's application for more time to apply to cancel the Notice.

Due to the above, I find the tenant was conclusively presumed to have accepted that the tenancy ended on August 31, 2021, the effective date of the Notice, and I **dismiss** the tenant's application seeking cancellation of the One Month Notice.

I order that the tenancy ended on August 31, 2021.

In reviewing the Notice, I find it was on the RTB approved form with content meeting the statutory requirements under section 52 the Act.

I find that the landlord is entitled to and I **grant an order of possession for the rental unit effective 2 days after it has been served on the tenant, pursuant to section 55(1)(b) of the Act.**

The order of possession must be served on the tenant to be enforceable. Should the tenant fail to vacate the rental unit, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, such as **bailiff fees**, are recoverable from the tenant.

### Conclusion

The tenant's application is dismissed, without leave to reapply, as I have found that the tenant did not apply to dispute the Notice within the required timeline and as I have dismissed the tenant's application for an order extending the time to file an application disputing the Notice.

The landlord has been issued an order of possession for the rental unit, effective 2 days after it has been served on the tenant.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 20, 2021

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Residential Tenancy Branch