



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC-MT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 19, 2022 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated December 30, 2021 (the “Notice”) and for more time to dispute the Notice.

The Tenant appeared at the hearing. S.D. and M.G. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the deadline for disputing the Notice be extended?
2. Should the Notice be cancelled?
3. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?

### Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started January 08, 2018 and was for a fixed term ending July 31, 2018. The tenancy then became a month-to-month tenancy. Rent at the start of the tenancy was \$645.00 per month due on the first day of each month. The Tenant paid a \$322.50 security deposit and \$150.00 pet damage deposit.

The Notice was submitted. The effective date of the Notice is January 31, 2022. The grounds for the Notice include excessive traffic coming in and out of the rental unit and suspected drug activity as well as a gun being discharged in the rental unit which resulted in a bullet hole into the neighbouring rental unit.

The parties agreed the Notice was served on the Tenant in person December 30, 2021.

In relation to the request for more time to dispute the Notice, the Tenant testified as follows. The Tenant was sick, but not with COVID-19. It was recommended that the Tenant stay home and self-isolate. When the Tenant felt better, they went and applied to dispute the Notice.

The only documentary evidence the Tenant submitted for the hearing is the Notice and a handwritten note about why they disputed the Notice late.

M.G. disputed the reasons the Tenant provided for filing the dispute of the Notice late. M.G. testified that they have 58 videos of people coming in and out of the rental unit at the time the Tenant says they were self-isolating. M.G. also testified that the Tenant can be seen in the videos coming and going from the rental unit without a mask on.

I heard the parties on the grounds for the Notice; however, I do not find it necessary to detail this testimony here given the decision below.

### Analysis

The Notice was issued pursuant to section 47 of the *Act*.

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*.

The parties agreed the Tenant received the Notice December 30, 2021. The Tenant had until January 10, 2022, to dispute the Notice. The Tenant did not file the Application until January 19, 2022, nine days late.

Section 66 of the *Act* states:

66 (1) The director may extend 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]. (emphasis added)

RTB Policy Guideline 30 states:

#### 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 said "reason" must have some persuasive evidence to support the truthfulness of what is said.**

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The **evidence** which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the

dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

(emphasis added)

The Tenant has the onus to prove exceptional circumstances existed such that the deadline to dispute the Notice should be extended. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their position.

The parties provided conflicting testimony about whether the Tenant was sick and self-isolating during the relevant time for disputing the Notice. The Tenant has not provided any further evidence to support their testimony. I note that the handwritten explanation of the reason for disputing the Notice late provided by the Tenant is not corroborative evidence of the Tenant's position because it was authored by the Tenant themselves. In the absence of some further evidence to support the Tenant's testimony and handwritten explanation, I am not satisfied the Tenant has proven exceptional circumstances prevented the Tenant from disputing the Notice on time. Given this, I decline to extend the deadline for disputing the Notice.

Section 47(5) of the *Act* states:

(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.

Given the Tenant did not dispute the Notice within time, the Tenant is conclusively presumed to have accepted that the tenancy ended January 31, 2022, the effective date of the Notice. The Tenant was required to vacate the rental unit by January 31, 2022. Given this, the Tenant's dispute of the Notice is dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

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.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content.

The Landlord is entitled to an Order of Possession and is issued an Order of Possession effective at 1:00 p.m. on April 30, 2022.

### Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 30, 2022. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 22, 2022

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Residential Tenancy Branch