



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC, MNDCT, OLC, FF

### **Introduction**

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy for cause. The tenant also applied for a monetary order for compensation for time spent in preparing for this hearing and the past two hearings. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

### **Issues to be Decided**

Has the landlord validly issued the notice to end tenancy?

Did the tenant dispute the notice to end tenancy in a timely manner?

### **Background and Evidence**

The tenancy started on May 01, 2020. The current monthly rent is \$3,045.00 payable on the first of each month. The tenant testified that on December 26, 2022, she received a one month notice to end tenancy for cause. The effective date of the notice is January 31, 2023. The notice complied with section 52 of the *Residential Tenancy Act*.

The tenant disputed the notice on January 06, 2023. During the hearing I drew the tenant's attention to the date she received the notice and the date she applied to dispute it. The tenant was not aware that she had missed the deadline to dispute the notice but later acknowledged that she was late disputing the notice. The tenant stated that the reason for being late is because of the seasonal holidays around the time that she was served with the notice.

### **Analysis**

The tenant received the notice to end tenancy on December 26, 2022, with an effective date of January 31, 2023. The tenant had 10 days from the date of receipt of the notice, to dispute the notice but made application to dispute it on January 06, 2023, which is 11 days after receiving the notice. The tenant disputed the notice beyond the legislated time frame of 10 days and did not make application for an extension of time to make application to dispute the notice.

Under section 66(1) of the *Act*, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66). In this matter, the word *exceptional* implies that the reason(s) for failing to dispute a notice to end tenancy in the time required are very strong and compelling.

Even if the tenant had made application for an extension of time to make application to dispute the notice, on reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented her from filing to dispute the notice to end tenancy within the legislated time limit and accordingly I dismiss the application. The application has not been considered on its merits.

Pursuant to section 47 of the *Residential Tenancy Act*,

(4)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.

(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.

Therefore, I find that the landlord is entitled to an order of possession and pursuant to section 55(2)(b); I am issuing a formal order of possession. The landlord agreed to allow the tenancy to continue until April 30, 2023 and accordingly the order will be effective on this date. The Order may be filed in the Supreme Court for enforcement.

The tenant has applied for the cost of her time spent to prepare for this and prior hearings. Legislation does not permit me to award such costs and therefore the tenant's application for these costs is dismissed.

Since the tenant is not successful in her application, she must bear the cost of filing her own application. The tenant's application for the recovery of the filing fee is dismissed.

### **Conclusion**

The tenant's application is dismissed.

I grant the landlord an order of possession effective by 1:00pm on April 30, 2023.

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: March 10, 2023

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Residential Tenancy Branch