



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC-MT

### Introduction

The Tenant filed their Application for Dispute Resolution on November 29, 2022 seeking an order to cancel the One Month Notice to End Tenancy for cause (the “One-Month Notice”), and more time in which to make that Application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 6, 2023. The Tenant attended the hearing; the Landlord did not attend.

### Preliminary Matter – Notice of Dispute Resolution Proceeding to the Landlord

I questioned the Tenant directly on how they notified the Landlord about their Application, and more specifically about this hearing date and time. The Tenant stated they gave the Landlord the access code for the telephone conference call. When pressed further, the Tenant stated they sent registered mail to the Landlord and to the onsite manager at the rental unit property.

The Tenant was able to recall that they sent all of the documents forwarded to them from the Residential Tenancy Branch. This direct message went to the Tenant’s social worker support (who attended the hearing) on December 5, 2022. Their support in the hearing noted they sent out registered mail to the Landlord on December 6 or December 7, 2022.

I find it more likely than not that the Tenant sent the required information about this hearing to the Landlord in short order after receiving that information from the

Residential Tenancy Branch on December 5, 2022. I accept the Tenant completed service of the hearing information to the Landlord as required.

### Issues to be Decided

Is the Tenant permitted more time in which to make their Application, pursuant to s. 66 of the *Act*?

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

### Background and Evidence

In the hearing, the Tenant described receiving the One-Month Notice from their Landlord on October 4, 2022. This was attached to the door of their rental unit on that date. In the hearing, they listed the two reasons that their Landlord checked on page 2 for ending the tenancy, involving significant interference/unreasonable disturbance, illegal activity, and the Tenant's breach of a material term of the tenancy agreement.

The Tenant also described what the Landlord had provided for details on that document. This involved the Tenant's previous roommate who was involved in a fight on September 30, 2022.

In the interim period the Tenant checked in with the onsite manager to clarify whether they needed to move out from the rental unit. As reported by the Tenant in this hearing, the onsite manager stated there were no more complaints, and when the Tenant asked if they could stay, this onsite manager replied 'I can't see why not.'

The Tenant stated that the Landlord gave them "until 30 days". Their support was on vacation during this period immediately after the Landlord's service of the One-Month Notice. When this support returned from vacation, they assisted the Tenant in filing on the same day online; this was on November 29, 2022.

## Analysis

The *Act* s. 47 states that a landlord may end a tenancy by giving a One-Month Notice for various reasons listed in that section.

Following this, s. 47(4) states that within 10 days of receiving a notice a tenant may dispute that notice. Where a tenant does not make the application within 10 days, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

With respect to timelines for a tenant served an end-of-tenancy notice and their right to challenge that via the dispute resolution proceeding, the *Act* s. 66 sets out that a time limit *may* be extended in exceptional circumstances. The *Act* s. 66(3) also sets out: “The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.”

The Residential Policy Guideline 36 ‘Extending a Time Period’ gives a statement of the policy intent of the legislation. Specific to the present scenario, the guideline sets out:

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter *even where the tenancy can establish grounds that there were exceptional circumstances*. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

In these circumstances, the *Act* is clear that there is no consideration of exceptional circumstances. The Tenant applied to dispute the Two-Month Notice on November 29, 2022. I find that, more likely than not, the Tenant applied past the end-of-tenancy date on that One-Month Notice. This means I am dismissing the Tenant’s Application for this reason.

The *Act* s. 55 prescribes an order of possession to a landlord where the Tenant’s Application is dismissed; however, a condition involving the notice to end tenancy complying with s. 52 of the *Act* is also necessary.

The *Act* s.52 provides that a notice to end tenancy must be in writing and must contain the essential elements. These are: a date and signature; the rental unit address; and

the effective date. Additionally, the notice must be in the approved form when given by a landlord.

There is no copy of the One-Month Notice in the record, neither provided by the Tenant nor the Landlord. I therefore cannot verify whether the important elements set out in s. 52 are present in the document. Without this information, I find the condition of s. 55(1)(b) is not present, and there is no order of possession to the Landlord in these circumstances. The onus is on the Landlord to show that the form and content of the document are correct, and the Landlord did not attend the hearing or provide evidence.

In conclusion, while I am dismissing the Tenant's Application, I am not granting the Landlord an order of possession. This means the tenancy will continue.

### Conclusion

For the reasons outlined above, I grant no order of possession for the One-Month Notice the Landlord served on October 4, 2022. The tenancy shall continue.

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

Dated: April 6, 2023

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Residential Tenancy Branch