

## **DECISION**

### **Introduction**

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The tenant sought various relief under the *Residential Tenancy Act* (the “Act”), including an order cancelling a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act. Seven other relief were also sought, as listed in the tenant’s application for dispute resolution.

For the reasons that follow, only the first claim for relief is dealt with in this Decision. All other relief is dismissed *with* leave to reapply; the tenant is at liberty to file a new application if any of the remaining claims need to be addressed.

### **Preliminary Issue: Conclusive Presumption**

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The One Month Notice was served on March 31, 2023. Two copies of the One Month Notice were served, with one copy being attached to the door of the rental unit and the other copy being put in the tenant’s mailbox.

The tenant indicated in their application that they were in hospital during the period in which the One Month Notice was served and was thus not able to file this application to dispute the One Month Notice until April 28, 2023. There is, it should be noted, no documentation from the hospital confirming the dates on which the tenant was in the hospital. Further, the landlord submitted a transcription of a voicemail. The voicemail was made on or about April 12, 2023, and the transcription reflects the tenant’s acknowledgment of having received the notice to end tenancy.

A tenant given a notice to end tenancy under section 47 of the Act has 10 days from the date that the tenant receives that notice to file an application for dispute resolution. Failure to file such an application within 10 days triggers section 47(5) of the Act, which states that 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.

The tenant received the One Month Notice at some point between March 31 and April 12, 2023. Therefore, the tenant had until April 22, at the very latest, to file an application to dispute the notice. However, the tenant did not file the application until April 28. There is also no persuasive argument or evidence leading me to find that “exceptional circumstances” existed (and which are required under section 66(1) of the Act) permitting me to extend application filing deadlines.

Therefore, it is my finding that the tenant did not make their application in time, and they are conclusively presumed to have accepted that the tenancy must end on the effective date of the One Month Notice.

Pursuant to section 55(2)(b) of the Act, the landlord is entitled to an order of possession of the rental unit. An order of possession is issued with this Decision to the landlord, who, if necessary, must serve a copy of the order upon the tenant forthwith.

The tenant’s application to cancel the One Month Notice is thus dismissed without leave to reapply.

Given the extraordinary difficulty that the tenant will face in securing new accommodations, and, considering that the tenant does not, in my opinion, present a clear and present danger to the landlord or its occupants, I exercise my discretion under section 55(3) of the Act and set the effective date of the order of possession to that of September 30, 2023.

The tenancy will end on September 30, 2023.

## **Conclusion**

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The tenant's application to cancel the One Month Notice is hereby dismissed, without leave to reapply.

The tenant's application for all other relief is dismissed with leave to reapply.

The landlord is granted an order of possession effective September 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 Act.

Dated: August 23, 2023

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Residential Tenancy Branch