



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Code            CNL-MT, OLC, FFT

### Introduction

This hearing was scheduled pursuant to an Application for Review Consideration made by the Tenant on May 16, 2023. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated April 22, 2023 (the Two Month Notice);
- an order granting an extension of time to dispute the Two Month Notice;
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing and provided affirmed testimony.

### Preliminary Issue – Extension of Time

The Tenant testified the Two Month Notice was received on April 26, 2023. The Tenant's application to dispute the Two Month Notice was made on May 16, 2023, the day the filing fee was paid. Section 49(8) of the Act requires a tenant to dispute a notice to end tenancy issued under section 49(3) of the Act within 15 days after receipt. I find the Tenant did not dispute the Two Month Notice on time in accordance with section 49(8) of the Act.

However, section 66(1) of the Act permits the director to extend a time limit established under the Act in “exceptional circumstances.” Policy Guideline #36 describes exceptional circumstances as follows:

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

The Tenant testified she did not know she had to pay a \$100.00 filing fee until she attended the Residential Tenancy Branch office after receiving the Two Month Notice. Although the Tenant testified that she tried to apply for a fee waiver, she was unable to do so due to her income. The Tenant testified that she needed until May 16, 2023 to get the funds together to apply for dispute resolution.

After considering the above, I find there is insufficient evidence before me to conclude there are exceptional circumstances that justify an extension of time. The Tenant's reasons are not strong and compelling but appear to be more of an excuse. The Tenant had 15 days after receiving the Two Month Notice to dispute it and to pay the filing fee or apply for a fee waiver. While I accept that the Tenant's financial circumstances may be difficult, the risk of failing to dispute the Two Month Notice on time is clearly stated on the top of the first page of the Two Month Notice. Further, the Tenant's lack of familiarity with the process, including the requirement to pay a filing fee, does not provide a sufficient basis for an extension.

Section 49(9) of the Act confirms that if a tenant fails to dispute a notice to end tenancy for landlord's use of property on time in accordance with section 49(8) of the Act, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit. I find the Tenant filed the application late and that there are no exceptional circumstances upon which to grant an extension of time. Therefore, I find

the Tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit. As a result, the Tenant's application is dismissed without leave to reapply.

Section 55(1) of the Act states that when a tenant's application to cancel a notice to end tenancy is dismissed and the notice to end tenancy complies with the form and content requirements of section 52 of the Act, the director must issue an order of possession in favour of the landlord. The language in the Act is mandatory. I have reviewed the Two Month Notice and find it complies with the requirements of section 52 of the Act. Therefore, I grant the Landlord an order of possession which will be effective two days after it is served on the Tenant.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: September 8, 2023

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Residential Tenancy Branch