



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Municipal Affairs

## DECISION

**Dispute Codes**      **CNC-MT, OLC, FFT**  
                                 **CNR-MT, OLC, FFT**

### **Introduction**

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This hearing dealt with two applications by the Tenant under the *Residential Tenancy Act* (the Act) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") pursuant to section 46;
- More time to file an application to cancel each Notice to End Tenancy under section 66;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the Tenant for the filing fees pursuant to section 72.

Both parties attended

### **Service**

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The Landlord acknowledged receipt of the Tenant's Proceeding Package and evidence. The Tenant acknowledged receipt of the Landlord's evidence. Neither party raised issues regarding service.

Further to the documents submitted by each party and their acknowledgement, I find that each party served the other in compliance with the Act.

### **Preliminary Issue: Severance**

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The Tenant's application included unrelated claim(s) in addition to the Tenant's application to dispute the landlord's One Month Notice and 10 Day Notice.

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the Tenant's primary application pertains to disputing the Notices. The additional claim(s) are not related to whether the tenancy continues.

Therefore, all the Tenant's claims except for the application to dispute the landlord's Notices and reimbursement of the filing fee are dismissed with leave to reapply.

The Tenant may reapply for these claims subject to any applicable limits set out in the Act, should the tenancy continue.

### **Preliminary Issue – Settlement**

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Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle their dispute.

Both parties agreed to the following terms of a final and binding resolution of the Tenant's application and the issues in dispute arising out of this tenancy at this time and that they did so of their own free volition and without any element of coercion:

1. The parties agreed the Tenant owes the Landlord outstanding rent in the amount of \$13,000.00.
2. The Tenant will pay this amount of \$13,000.00 in cash to the Landlord's husband and agent R.F. at a meeting to take place between R.F. and the Tenant on December 10, 2024 at 12:00 noon at the bank's location designated by the parties during the hearing; upon payment, the Landlord will provide a receipt to the Tenant.

3. The Tenant will remove the Tenant's plants from the Landlord's planter by December 18, 2024 at 5:00 pm.

To give effect to the settlement reached between the parties and as discussed at the hearing, I grant a Monetary Order to the Landlord in the amount of \$13,000.00.

Following service of the Monetary Order on the Tenant, the Landlord may file and enforce the Order in the courts of the Province of BC.

### **Preliminary Issue – Tenant's Request for More Time to Apply for Dispute**

The Tenant requested more time to file an application to dispute the Landlord's One Month Notice and 10 Day Notice. Copies of the Notices were submitted which are in the standard RTB form and comply with section 52 (form and content).

The parties agreed as follows:

- The Landlord issued a One Month Notice dated October 25, 2024 setting out several reasons for ending the tenancy.
- A copy of the One Month Notice was submitted which is in the standard RTB form. The Notice includes information as follows:
  - The Tenant had ten days to apply to dispute the notice, that is by November 7, 2024.
  - An arbitrator may extend the time to file an Application for Dispute Resolution, but only if they accept the Tenant's proof that they had a serious and compelling reason for not filing the Application on time.
- The Landlord posted the One Month Notice to the Tenant's door on October 25, 2024 effective three days later, that is October 28, 2024.
- The Tenant applied to dispute the notice outside the 10-day period, on November 12 2024.
- The Landlord also issued a 10 Day Notice on November 3, 2024 which was posted to the Tenant's door that day thereby effecting service on November 6, 2024. The Tenant had five days to pay the outstanding amount or apply for Dispute Resolution. The Tenant disputed the Notice on November 12, 2024, outside the 5-day period.

The Tenant stated she was well and so was not able to file the disputes within the time allowed. The Tenant submitted documents in support including the following:

- A written statement from the Tenant describing her health issues including recurrent migraines and asserting she was not well enough to file disputes in the time allowed.
- Confirmation from a medical facility that she received outpatient treatment three times in October 2024. The Tenant also testified to medical treatment on November 1, 2024.
- A copy of a letter from Dr. JP dated November 12, 2024 stating the doctor is treating her for migraines and related conditions. This letter does not include the doctor's address or signature.
- The tenant testified that during the tenancy, she has had to deal with the care of aging parents and the loss her father, which has exacerbated her health issues and inability to file the disputes within the time periods.

Section 66(1) states, the director may extend a time limit established by this Act only in exceptional circumstances.

*Residential Tenancy Policy Guideline 36. Extending a Time Period* sets out the consideration for "exceptional" circumstances when an applicant seeks to extend a time limit provided by the Act.

The Guideline states as follows. Exceptional means a reason that is not ordinary, but extraordinary. Exceptional implies that the reason is very strong and compelling for failing to do something at the time required. A party putting forward a reason for a time extension must have some persuasive evidence to support the truthfulness of what is said.

The Guideline goes on to provide an example of what could be considered exceptional circumstances. For example, a party may have been in the hospital.

The Tenant must show on a balance of probabilities that there were exceptional circumstances. In other words, the Tenant's reasons must be more likely than not to be true.

I find the Tenant has not met the burden of proof that the circumstances described by her are exceptional. I do not grant the Tenant's application for more time with respect to the Notices.

The letter from the doctor JP is not signed and does not include an address. It does appear authentic or credible. It is not persuasive evidence and I give it little weight.

While the Tenant did submit evidence of having seen a doctor four times in the two weeks before the Notices were issued, I find that this alone is not strong and compelling evidence to amount to a finding of exceptional circumstances under the Act and the Policy Guideline.

I therefore dismiss the Tenant's application for more time to dispute the One Month Notice and the 10 Day Notice under section 66.

### **Issue(s) to be Decided**

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Is the Tenant entitled to cancellation of the Notices?

Is the Tenant entitled to reimbursement of the filing fees for the application?

### **Background and Evidence**

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The hearing was scheduled for one hour and was completed after 103 minutes. The parties submitted conflicting evidence. I do not refer to all this evidence in the decision. I reference only admissible, relevant and key findings and facts.

#### *Tenancy*

The parties agreed the 10-month tenancy began on February 8, 2024. Rent is \$2,600.00 a month. The Landlord holds the Tenant's security deposit of \$1,300.00. The Tenant continues to live in the unit and has no plans to move out.

The Landlord testified it was a material term of the tenancy that rent be paid in cash. The landlord adamantly refused to allow the tenant to pay by any other means saying that cashing cheques was slow and unreliable. She did not know how to receive bank transfers. The Landlord had been renting units for decades and always received rent this way, a fact which was conveyed to the Tenant before she moved in, and to which the Tenant agreed. The Landlord did not cash any of the Tenant's rent cheques.

The Tenant denied she ever agreed to only pay rent by cash. The landlord merely indicated payment by cash was preferable. While the Tenant acknowledged she paid rent by cash for the first several months of the tenancy before changing to cheques, the Tenant asserted she was within her rights to change the method of payment. The change was necessary because of her personal circumstances causing her not to have the bandwidth to get cash and give it to the Landlord. It was less time and energy consuming to pay by cheque.

The Tenant acknowledged she had received receipts for rent paid by cash although not in a timely manner.

*Notices to End Tenancy*

As stated above, the parties agreed the Landlord issued a One Month Notice as follows:

- The Landlord posted the One Month Notice to the Tenant's door on October 25, 2024 effective three days later, that is October 28, 2024.
- The Notice included the following grounds:
  - Tenant is repeatedly late paying rent.
  - The Tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord. put the landlord's property at significant risk.
  - Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- The Landlord claimed it was a material term of the tenancy that the Tenant pay rent by cash which the Tenant initially did. However, the Tenant switched to cheques despite the Landlord's requirement and repeated requests that she pay by cash.
- The Tenant applied to dispute the Notice outside the 10-day period, on November 12, 2024.
- The Landlord claimed as follows. The Tenant failed to pay rent in the manner directed by the Landlord with the result that considerable rent was outstanding. The Tenant used the Landlord's planter for the Tenant's plants, was warned to stop doing so, and continued.
- I have denied the Tenant's application for more time to cancel the Notice.

The parties agreed the Landlord issued a 10 Day Notice as follows:

- The Landlord issued a 10 Day Notice on November 3, 2024 which was posted to the Tenant's door that day thereby effecting service on November 6, 2024. The Tenant had five days to pay the outstanding amount or apply for Dispute Resolution.
- The Tenant disputed the Notice on November 12, 2024, outside the 5-day period.
- The 10 Day Notice was in the standard RTB form and a copy was submitted.

- I have denied the Tenant's application for more time to cancel the Notice.

The Landlord requested an Order of Possession effective as soon as possible.

The Tenant denied the Landlord is entitled to an Order of Possession. If an Order of Possession were issued, the Tenant suggested she be granted three of more months to move as the holiday season is approaching making finding a new place and moving difficult.

## **Analysis**

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### **Is the Landlord entitled to an Order of Possession under the One Month Notice?**

I find the Landlord is entitled to an Order of Possession under the One Month Notice.

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so.

Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The Landlord posted the One Month Notice to the Tenant's door on October 25, 2024 effective three days later, that is October 28, 2024.

The Tenant applied to dispute the Notice outside the 10-day period, on November 12, 2024.

I have denied the Tenant's application for more time to cancel the Notices.  
The Notices comply with section 52 of the Act.

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 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.

As I have dismissed the Tenant's application, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the unit.

The Landlord has established the Tenant has breached a material term of the tenancy to pay the rent in cash despite warnings. I find the Landlord has met the burden of proof this was a mutually agreed upon term as evidenced by the Tenant paying the rent by cash for the first several months of the tenancy.

In view of my decision, I will not consider an Order of Possession under the 10 Day Notice.

I have considered both parties statements concerning the effective date of the notice. In view of these submissions and the criteria in *RTB Policy Guideline Ending a Tenancy: Orders of Possession*, I grant an Order of Possession effective January 31, 2025 at 1:00 pm.

### **Conclusion**

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I grant the following:

1. A Monetary Order in which the Tenant is directed to pay the Landlord \$13,000.00 by December 10, 2024.
2. An Order of Possession effective January 31, 2025.

These Orders may be filed and enforced in the courts of the Province of BC after service upon the Tenant.

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: December 09, 2024

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Residential Tenancy Branch