



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, her interpreter and two agents for the landlord.

The tenant's Application named one of the agents for the landlord as the landlord. However, the tenancy agreement submitted names a society as the landlord, the 2 Month Notice to End Tenancy submitted names another society as the landlord and the landlord's evidence explains that the current society took over operations from the previous society on June 1, 2010. As such, I amend the tenant's application to name the society as the landlord.

At the outset of the hearing, the tenant requested her interpreter be called into the hearing. After a couple of attempts to contact the interpreter the hearing proceeded with the interpreter on the call.

The landlord requested an order of possession, in the event the tenant is not successful in her application, in their written submission to the hearing.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, pursuant to Section 49.1 of the *Residential Tenancy Act (Act)*.

If the tenant is not entitled to cancel the 2 Month Notice to End Tenancy it must be decided if the landlord is entitled to an order or possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

The landlord submitted a copy of a tenancy agreement for a tenancy that began as a month to month tenancy on July 1, 2004 for a current subsidized rent amount of \$510.00 per month and a security deposit of \$450.00 was paid.

The tenancy agreement has a clause specifically relating to the eligibility for rent supplement (subsidy). This clause states that the tenant must declare the income and assets of all adult residents and to provide proof as required by the landlord. The clause goes on to say that while the landlord will require this annually they may require a reassessment at any time.

The clause also states that failure to declare or document income is a fundamental and material part of the tenancy agreement and that misrepresentation or attempts to conceal information requested may give the landlord cause to end the tenancy.

The landlord's agent testified that since the start of the tenancy the tenant's husband has lived with her at least periodically. The landlord's onsite agent testified that he had seen the tenant's husband living there since September 2010 and the other agent testified that he first saw the husband in May 2011 during a routine annual inspection of the rental unit.

The landlord's agent testified that on May 26, 2011 the tenant was provided with a letter that states: "As numerous warnings have been given over the last number of years that (husband) must either leave or be registered, and these requests have been ignored, this notice is the final one you will receive. It is mandatory that you contact (agent) at our main office to complete the review by June 30, 2011 or eviction proceedings will be initiated against your tenancy."

The tenant testified that she thought the assessment for this year had been complete so she never contacted the office as requested in the letter dated May 26, 2011. The tenant also testified that her husband does not live with her and that, in fact, he is currently living out of province.

Both parties submitted into evidence a copy of the 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit issued by the landlord on June 30, 2011 with an effective vacancy date of August 31, 2011.

### Analysis

Section 49.1 of the *Act* states that, if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant ceases to qualify for the rental unit.

The *Act* does not provide for the Director to declare jurisdiction over the determination of whether the tenant qualifies for the subsidy itself. The landlord alone determines if the tenant qualifies.

I accept that the landlord has determined, based on the tenant's failure to provide requested proof of the residents and all income and assets of those residents, the tenant no longer qualifies for the subsidized rental unit.

I also accept the tenancy agreement, from the submitted copy, stipulates the landlord may end the tenancy if the tenant fails to provide requested documentation and proof to qualify for subsidy.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

As per the landlord's request, I find the landlord is entitled to an order of possession effective **August 31, 2011 after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: August 15, 2011.

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Residential Tenancy Branch