



# 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 an Application for Dispute Resolution by the Tenant to cancel a 2 Month Notice to end tenancy because the Tenant does not qualify for subsidized rental unit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has a valid 2 Month Notice to End Tenancy been issued in accordance with section 49.1 of the *Residential Tenancy Act* (the Act)?
2. Has the Tenant re-qualified for the subsidized rental unit since receiving the 2 Month Notice?
3. If not, has the Landlord appeared at the teleconference hearing and made an oral request for an Order of Possession?

### Background and Evidence

The parties agreed they entered into a written month to month tenancy agreement for rent in a subsidized housing complex that began on March 1, 2007. The current subsidized rent is due on the first of each month in the amount of \$272.00 and on or before March 1, 2007 the Tenant paid \$452.50 as a security deposit that was based on market value rent.

The Landlord affirmed that on September 3, 2011 the Tenant completed the annual rent subsidy application at which time she informed the Landlord that her three children were removed from her care by the Ministry of Children and Families and are no longer residing with her in the rental unit.

The Landlord made reference to the tenancy agreement sections 19, 20, and 22 and advised that when the number of occupants or tenants in a rental unit changes it is grounds for ending the tenancy because entitlement to the subsidy changes.

The Landlord stated that when the Tenant informed them of the temporary removal of her children they verbally agreed to give the Tenant six months to work to regain custody of her children and that if the Tenant was not successful within that six month period they would have to end her tenancy. The Landlord referenced a contact record document they provided in evidence which indicates the Tenant informed the Landlord on February 21, 2012 that her children were still in the Ministry's custody. This resulted in the Landlord issuing the 2 Month Notice to end tenancy on February 23, 2012.

The Tenant affirmed she received the 2 Month Notice February 23, 2012 when she heard it get placed through her mail slot. She referenced her letters of support that were provided in evidence and advised that she is hopeful that her children will be returned to her fulltime within the next six month period. She argued that at this time the Ministry only holds temporary custody which will expire on June 8, 2012. She requested that the Landlord extend her offer to allow another six month grace period.

The Landlord advised that they are bound by their management agreement with the Housing agency and cannot extend this subsidy any further. The Landlord requested that I uphold the 2 Month Notice to End Tenancy and that I issue an Order of Possession effective April 30, 2012.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the tenancy agreement, the Tenant's application for subsidy, letters of support for the Tenant, and records of conversations between the Landlord's agents and the Tenant.

Section 49.1 (2) of the Act provides that a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

In this case the evidence supports the Tenant no longer qualifies for the subsidized tenancy as the number of occupants / tenants has been reduced as her children continue to be in the Ministry's care and not residing with her in the rental unit. There is no evidence before me to indicate when the children may be returned into the Tenant's care and therefore no proof that the subsidy would be reinstated prior to the effective date of the 2 Month Notice to End Tenancy.

Upon review of the 2 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the 2 Month Notice. Accordingly I dismiss the Tenant's application to cancel the 2 Month Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. The Landlord appeared and requested an Order of Possession in accordance with the 2 Month Notice, effective April 30, 2012.

### Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective April 30, 2012. This Order is legally binding and must be served 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: March 27, 2012.

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Residential Tenancy Branch