



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 17, 2012, at 12:19 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the written submissions of the Landlord, I find that the Tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by all parties for a subsidized month to month tenancy which began on March 15, 2011, for the market value rent of \$1,050.00 due on 1st of the month and a deposit of \$525.00 was paid on March 08, 2011; and
- A copy of a letter dated February 17, 2012 informing the Tenant that she no longer qualifies for subsidized rent retroactive to December 1, 2011 and rent will be \$1,161.00 as of that date; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, April 3, 2012 with an effective vacancy date of April 16, 2012, due to \$4,230.00 in unpaid rent that was due on April 01, 2012.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent on April 3, 2012 at 9:00 a.m. when it was posted to the Tenant's door in the presence of a witness.

### Analysis

Section 49.1 of the Act stipulates how a landlord may end a tenancy when a tenant no longer qualifies for subsidized rent as follows:

**49.1** (1) In this section:

**"public housing body"** means a prescribed person or organization;

**"subsidized rental unit"** means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2) Subject to section 50 [*tenant may end tenancy early*] and 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 or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), 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.

Section 21 of the tenancy agreement pertaining to this case stipulates the landlord may end a tenancy with (2) month's notice of the tenant no longer qualifies for a subsidized rental unit [six].

In this case the evidence clearly indicates that this tenancy was based on subsidized rent and the Tenant was informed, in writing on February 17, 2012 that she no longer qualifies for the subsidy effective December 1, 2011. As a result the rent increased retroactively from \$315.00 to \$1,161.00 per month. The Tenant has continued to pay the subsidized rent amount.

As per the aforementioned I find the Landlord may end this tenancy by issuing a 2 Month Notice as the tenant no longer qualifies for a rental subsidy, pursuant to section 49.1 of the Act and section 21 of the tenancy agreement and not by issuing a 10 Day Notice. Accordingly I dismiss the Landlord's application.

### Conclusion

I HEREBY DISMISS the Landlord's application.

The 10 Day Notice to end tenancy for unpaid rent dated April 3, 2012 is hereby cancelled and is of no force or effect.

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: April 23, 2012.

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Residential Tenancy Branch