



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC Housing  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNQ, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy issued by the landlord because the tenant does not qualify for subsidized housing.

The tenant attended the hearing and gave affirmed testimony, however, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents on May 30, 2014, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the tenant. The tenant testified that the landlord was served on that date by handing the documents to the receptionist at the landlord's place of business, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Both parties provided evidentiary material to the Residential Tenancy Branch and the tenant testified that he received the landlord's evidence and provided evidence to the landlord. All evidence and testimony provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

### Background and Evidence

The tenant testified that this month-to-month tenancy began on June 1, 2008 and the tenant still resides in the rental unit. Rent is subsidized according to income and the tenant's share is currently \$213.00 per month and there are no rental arrears. No security deposit or pet damage deposit were collected by the landlord.

The tenant further testified that the landlord served the tenant with a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit by sending it by regular mail to the tenant. The tenant believes it was received on May 23, 2014. A copy of the notice has been provided and it is dated May 20, 2014 and contains an expected date of vacancy of July 31, 2014. The reason for issuing the notice states: "The tenant no longer qualifies for the subsidized rental unit." Also provided is a letter from the landlord to the tenant dated May 20, 2014 stating that since the tenant did not provide a Declaration of Income and Assets and documentation, the tenant has breached a material term of the tenancy and no longer qualifies for subsidized housing.

The tenant also testified that the landlord issued a letter dated May 7, 2014 stating that the landlord had received the completed Declaration of Income and Assets but the tenant's child is not listed as living in the rental unit, and requests confirmation by way of a current Court Order or written confirmation from the child's mother stating the current custody. The tenant testified that he has custody of the child in British Columbia but not in Alberta, and is currently awaiting a hearing to make the custody order applicable throughout Canada. The tenant has provided a Declaration of Income and Assets signed by the tenant and dated July 3, 2014 wherein the tenant has included the child as a resident of the rental unit. The tenant testified that the child is now in the physical custody of the tenant, has resided with the tenant in the rental unit since the end of June, 2014, and the tenant qualifies for the subsidized rental unit.

The tenant filed the application for dispute resolution on May 30, 2014 and requests that the notice to end tenancy be cancelled.

### Analysis

Where a tenant disputes a notice to end tenancy, the onus is on the landlord to prove the notice, which can include the reasons for issuing it. I have reviewed the letters of the landlord, and find that the landlord notified the tenant that he didn't qualify for the subsidized rental unit because the tenant did not list his child as a resident on the Declaration of Income and Assets. The tenant disagrees that he does not qualify and testified that he has custody in British Columbia and has had physical custody since the end of June, 2014. The tenant has completed a newer Declaration of Income and Assets which states that the tenant's child is resident in the rental unit, and in the absence of any evidence or testimony from the landlord to the contrary, I find that the landlord has failed to establish that the notice should be upheld.

In the circumstances, I find that the notice should be cancelled.

Conclusion

For the reasons set out above, the notice to end tenancy issued by the landlord dated May 20, 2014 is hereby cancelled and the tenancy continues.

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: July 16, 2014

---

Residential Tenancy Branch

