



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNQ

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the "2 Month Notice") pursuant to section 66; and
- cancellation of the landlord's 2 Month Notice pursuant to section 49.1.

The tenant and the landlord's two agents (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed they were agents of the landlord's company named in this application, and had authority to speak on its behalf.

### Preliminary Issue – Service of Application

Although the landlord confirmed receipt of the tenant's application, the landlord testified that he did not receive the application until July 20, 2016, well past the three day provision allocated by section 59 of the *Act*. Despite this late service, I find in accordance with sections 89 and 90 of the *Act* that the landlord was duly served with the application.

### Preliminary Issue – More Time

The tenant confirmed receipt of the landlord's 2 Month Notice, dated June 28, 2016 by way of posting to the rental unit door. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice, on July 1, 2016, three days after its posting.

Section 49.1 of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 15 days after receiving the notice, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Because the 2 Month Notice has been deemed served on July 1, 2016 the tenant was required to file her application to dispute the 2 Month no later than July 15, 2016. The tenant filed her application on July 5, 2016, well within the allotted time. Therefore I dismiss the tenants application for more time to make an application to cancel the landlord's 2 Month Notice without leave to reapply.

#### Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

#### Background and Evidence

Neither party submitted a written tenancy agreement but both testified that the tenancy began in February of 2011 on a fixed term for five months after which time it continued on a month to month basis. Rent in the current amount of \$455.00 is payable on the first of each month. The tenant remitted \$450.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 2 Month Notice. The ground to end the tenancy cited in that 2 Month Notice was that the tenant no longer qualifies for the subsidized rental unit.

#### *Landlord*

It is the landlord's position that the tenant has permitted her boyfriend to live in the rental unit and as a result of this; the tenant no longer qualifies for subsidized housing. The landlord has observed the tenants boyfriend at the rental unit at all hours and has observed his parked vehicle in the parkade and outside the complex.

The landlord also contended that the tenant has breached a material term of the tenancy agreement by allowing her boyfriend to live in the rental unit.

#### *Tenant*

The tenant disputes that the guest the landlord refers to as her boyfriend is in fact her boyfriend. The tenant further refutes that this guest lives with her. The tenant contended that this guest is a friend that visits her at the rental unit. The tenant testified that she received a letter from the landlord dated May 16, 2016 requesting proof that her guest lived elsewhere. The tenant and her guest, witness SC testified that this information was forwarded to the landlord at the end of May. The tenant and witness SC testified that the guest lives in Abbotsford and the landlord was provided with records to reflect this. Specifically, witness SC testified that he provided rent receipts for his own residence, vetted bank statements and tax receipts.

#### *Landlord reply*

The landlord acknowledged receipt of some information forwarded by the tenant about her guest but testified that this information received did not prove that the guest did not live there. Specifically, the landlord acknowledged receipt of a handwritten note that indicated the guest lived in Chilliwack, and a statement that was completely vetted.

#### Analysis

Under section 49.1 of the *Act*, a landlord may end a tenancy if the tenant no longer qualifies for a subsidized rental unit.

The onus is on the landlord to prove that the tenant no longer qualifies for a subsidized rental unit. The landlord provided evidence in the form of testimony and written letters regarding the tenant's guest, however the landlord did not provide documentary evidence from the third party that provides the subsidy. Therefore I find the landlord has provided insufficient evidence to prove the tenant no longer qualifies for subsidized housing.

In relation to the landlord claim's that the tenant has breached a material term of the tenancy agreement, the landlord has not identified this as a ground to end the tenancy on the 2 Month Notice. Consequently, I find the landlord cannot rely on this as a reason to end the tenancy.

As I find the landlord has failed to satisfy the burden of proof, I allow the tenant's application to cancel the 2 Month Notice.

#### Conclusion

The tenant's application for more time to make an application to cancel the landlord's 2 Month Notice is dismissed without leave to reapply.

The tenant's application to cancel the 2 Month Notice is upheld.

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 22, 2016

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Residential Tenancy Branch