



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ, MNDC, OPT, FF

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit ("2 Month Notice") pursuant to section 49.1;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order of possession of the rental unit pursuant to section 54; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord's agent, KF (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 landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord confirmed receipt of the tenant's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the application.

### Preliminary Issue – Landlord's Late Evidence

The landlord testified that on February 17, 2017 she posted a 29 page evidence package to the rental unit door where the tenant resides. The tenant confirmed receipt of the evidence package on February 17, 2017 but contends this package was received contrary to Rule 3.15 which establishes that documentary evidence must be received by the applicant not less than 7 days before the hearing.

Rule 3.17 sets out that if evidence is received following this timeline, the evidence may or may not be considered depending on whether the respondent can prove this evidence was new and relevant evidence that was unavailable within the timelines set by Rule 3.15. The evidence package was served just 2 days prior to the hearing and the landlord did not show this evidence was new and unavailable within the timelines established by Rule 3.15. For these reasons, I have not relied on the landlord's 29 page evidence package to form any part of my decision.

### Preliminary Issue – Monetary Claim Dismissed

With respect to the tenant's monetary claim, I find that Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution hearing, if the arbitrator determines it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

I find the most pressing matter in the tenant's application is the request to cancel the 2 Month Notice. Because the tenant's claim for damages is made under section 67 of the *Act*, I find this part of the application is distinct from the tenant's request that the 2 Month Notice, be cancelled pursuant to section 49.1 of the *Act*.

Accordingly I find the monetary portion of the tenant's application must be severed and the monetary claim must be dealt with separately through an application under 67 of the *Act*. Therefore the portion of the tenant's application seeking a monetary order is dismissed with 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?

Is the tenant entitled to an order of possession of the rental unit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

### Background and Evidence

Neither party submitted a written tenancy agreement but both testified that the tenancy began on May 1, 2015 on a month-to-month basis. The landlord named in this application is a non-profit housing society which owns the building that contains the rental unit. The landlord operates the building under its agreement with BC Housing

which provides a monthly subsidy. Rent has been based on a percentage of the tenant's gross annual income.

The parties agree the tenant's income was assessed at the start of tenancy which established a monthly rent of \$300.00 and again during the annual income review in July of 2015 which re-established rent as \$300.00. The tenant's income was not assessed in 2016 due to the tenant's noncompliance with requests to provide proof of income.

Due to the tenant's non-compliance with requests to provide income verification, the landlord issued the 2 Month Notice dated January 5, 2017. The tenant acknowledged receipt of the landlord's 2 Month Notice.

It is the landlord's position that the tenant has obtained gainful employment and in an effort to avoid paying higher rent the tenant has refused to provide verification of income.

The tenant testified that because a written tenancy agreement does not exist which stipulates the tenancy will end in the event the tenant no longer qualifies for the subsidy, the landlord cannot end the tenancy on this ground.

### 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 provided the tenancy agreement clearly states that the tenancy will end if the tenant no longer qualifies for the subsidy.

The onus is on the landlord to prove the above. In the absence of a written tenancy agreement, I find the landlord has failed to satisfy this burden of proof and therefore allow the tenant's application to cancel the 2 Month Notice.

In relation to the tenant's application for an order of possession, I find the granting of such an order is not required as the tenant has maintained possession of the rental unit throughout. For this reason I dismiss this portion of the tenant's claim without leave to reapply.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed with leave to reapply.

The tenant's application to cancel the 2 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for an order of possession of the rental unit is dismissed without leave to reapply.

The tenant is entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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: February 21, 2017

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Residential Tenancy Branch