



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNQ, MT

### Introduction

On July 18, 2018, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Notice”) pursuant to Section 49.1 of the *Residential Tenancy Act* (the “Act”) and seeking More Time to cancel the Notice pursuant to Section 66 of the *Act*.

The Tenant attended the hearing and D.K. attended the hearing as an agent for the Landlord. Both parties provided a solemn affirmation.

The Tenant advised that she served the Landlords with the Notice of Hearing packages and evidence by registered mail on July 18, 2018 and provided receipts confirming this. D.K. confirmed that she received the packages. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlords were served with the Notice of Hearing packages and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- Are the Tenants entitled to be granted more time to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Are the Tenants entitled to an Order for the Landlords to comply?

Background and Evidence

All parties agreed that the tenancy started on May 15, 2015. Rent was currently established at a subsidized amount of \$474.00 per month, due on the first day of each month. The Tenants paid a security deposit of \$438.50.

All parties agreed that the Landlords served the Notice by registered mail on May 1, 2018. The reason the Landlords served the Notice is because "The tenant no longer qualifies for the subsidized rental unit." The Notice indicated that the effective end date of the Notice was July 31, 2018.

The Tenant stated that the reason she did not dispute the Notice on time was because she did not understand the process and had called the Landlords to request more time.

Both parties agreed that they had settled the matter before the hearing. The Tenant advised that she wanted to withdraw the Application and the Landlord stated that she was not seeking an Order of Possession.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlords' Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on May 6, 2018. According to Section 49.1(5) of the *Act*, the Tenant has 15 days after the date the Tenant receives the Notice to dispute it. Section 49.1(6) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.”*

As the Notice was deemed to have been received on May 6, 2018, the Tenant would have had until May 21, 2018 to dispute this Notice. As May 21, 2018 was a statutory holiday, the Tenant must have made this Application by May 22, 2018 at the latest. However, the undisputed evidence is that the Tenant made her Application on July 18, 2018. As the Tenant was late in making this Application, she requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional circumstances that prevented her from disputing the Notice within the required time frame, she stated that the reason she did not dispute the Notice on time was because she did not understand the process and had called the Landlords to request more time.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant’s testimony and reasons would constitute exceptional circumstances. However, I do not find that any of the Tenant’s reasons for not disputing the Notice on time to satisfactorily be considered exceptional. There was insufficient evidence that the Tenant had significant issues or exceptional circumstances that prevented her from disputing the Notice on time. As such, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlords’ Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. However, as D.K. advised that the parties have settled, she stated that she is not pursuing an Order of Possession.

Rule 5.0.1 of the Rules of Procedure requires that the Tenant have the written consent of the Landlord to withdraw an Application to dispute a notice to end tenancy. I find that

the Tenant's request to withdraw the Application in full does not prejudice the Landlords, as D.K. was no longer seeking an Order of Possession. Therefore, the Tenant's request to withdraw the Application in full was granted. I note this decision does not extend any applicable timelines under the *Act*.

### Conclusion

The Tenant has withdrawn her Application in full.

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: September 11, 2018

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Residential Tenancy Branch