



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**Landlord:** OPQ, FFL  
**Tenant:** CNQ, OLC, RP

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession based on a Two Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (Two Month Notice) pursuant to sections 49.1 and 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72

The tenant sought:

- cancellation of the landlord's Two Month Notice pursuant to section 49.1; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (Tenant's Application) and evidence which was left in the landlord's mailbox on August 01, 2018. In accordance with sections 71 and 88 of the *Act*, I find that the landlord is duly served with the Tenant's Application and evidence.

The tenant acknowledged receipt of the Landlord's Application for Dispute Resolution (Landlord's Application) and evidence which was sent by registered mail to the rental unit on July 27, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the tenant is duly served with the Landlord's Application and evidence.

Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

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

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Is the tenant entitled to an order for the landlord to make repairs to the rental unit?

Background and Evidence

The landlord provided written evidence that this tenancy commenced on December 01, 2002, with an economic monthly rent of \$1,123.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$561.50. Term #8 of the tenancy agreement outlines the requirements for providing proof of income to qualify for subsidized housing.

A copy of the landlord's June 04, 2018, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by August 31, 2018, the landlord cited the following reason for the issuance of the Two Month Notice:

*The tenant no longer qualifies for the subsidized rental unit*

The landlord also submitted into evidence:

- a statement from the landlord which indicates that all tenants are expected to provide the past year's full income tax return, accompanying Notice of Assessment, proof of employment among other items, including bank statements. The statement indicates that the tenant has not provided this past year's full income tax return, to complete her application and that the deadline for the September subsidy renewal has passed for submitting this information. The statement goes on to say that the expectations for proof of income have been the same for the 20 years that the tenant has been living in the subsidized rental unit.
- A copy of a letter to all the residents in the building that the rental unit is located, dated May 15, 2018, which requests Notice of Assessment form and complete income tax return for 2017 which indicates in bold and capital letters "**MUST HAVE**"

- A copy of a letter from the landlord to the tenant dated June 04, 2018, in which the landlord details the required documentation needed from the tenant in order to qualify for subsidized housing and requests the tenant to provide this information immediately, advising that they have given the Two Month Notice to the tenant for non-compliance in the event the documentation is not provided.

The tenant provided some e-mails exchanged between the landlord and the tenant and a copy of their Notice of Assessment for 2017.

The landlord testified that that they are a non-profit housing provider and that in order for tenants to qualify to live in the subsidized rental unit, they must declare their income as well as the income of the two adult children who live with the tenant. The landlord stated that all the required information was requested from all tenants on May 16, 2018, and that the tenant has still not provided the full income tax return for 2017, among other items, as of the date of the hearing.

The landlord stated that all members of the household must provide the same income information and that the tenant only gives pieces of information or outdated information. The landlord stated that the deadline has passed for the subsidy application to be submitted to the subsidy provider; however the executive director still made an attempt to obtain the necessary documents in e-mails exchanged with the tenant and the tenant has still not provided what has been asked for. The landlord maintained that the same information has been requested for the 20 years that the tenant has lived in the rental unit and that they have had issues getting this information in the past which resulted in the landlord obtaining an Order of Possession in 2017, which they did not act on and instead worked with the tenant to agree on a payment plan of \$50.00 per month.

The landlord submitted that the non-profit group is in the business of housing people and not evicting them which demonstrates the severity of the tenant's non-compliance and defiance in providing the required documentation.

The tenant confirmed that they received the Two Month Notice on June 04, 2018, and had testified that they had applied to dispute the Two Month Notice on June 05, 2018, but that their application was dismissed with leave to reapply due to service issues. The tenant stated that they have had the same job for the last eight years and that they have always provided the same information to the landlord. The tenant stated that they do not have access to their complete tax return as they lost the e-mail and the party

who completed the tax return does not have it. The tenant submitted that they provided everything to the landlord that they were able to obtain from Canada Revenue Agency.

### Analysis

Section 49.1 of the *Act* allows a landlord to end the tenancy of a subsidized rental unit by giving notice to end tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

Section 49.1 of the *Act* provides that upon receipt of a notice to end tenancy for ceases to qualify for rental unit the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in accordance with the *Act*. As the tenant initially disputed this notice on June 5, 2018, and since the Two Month Notice was served to the tenant on June 04, 2018, I find the tenant applied to dispute the Two Month Notice within the time frame provided by section 49.1 of the *Act*.

I find that the rental unit is operated by a public housing society through an agreement with the British Columbia Housing Management Commission and that the eligibility criteria of the rental unit is related to the tenant's income, as well as the other occupants' income, pursuant to section 49.1 (1) of the *Act*. Having reviewed the documentary evidence and all affirmed testimony, I find that the tenant has not provided the required documents, including but not limited to, the complete tax return for 2017, which is necessary in order to determine eligibility to qualify for the subsidized rental unit. I find that the tenant has not provided this documentation after multiple written notices and e-mails were provided clearly listing the documentation required as well as e-mails exchanged with the executive director of the public housing society.

As the tenant has not provided the necessary documentation to prove that they qualify for subsidized housing or provided any reasonable explanation as to why they were not able to provide the requested documentation, I find that the tenant has not established their eligibility for the subsidized rental unit and that the landlord has sufficient grounds to end the tenancy. Therefore, the Tenants' Application to set aside the Two Month Notice is dismissed, without leave to reapply.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice

complies with section 52 of the *Act*. I find that the Two Month Notice is in compliance with section 52 of the *Act* and for this reason I grant a two (2) day Order of Possession to the landlord.

As this tenancy is ending, I find that the Tenant's Application for repairs to be made and for the landlord to comply with the *Act* is no longer applicable and they are dismissed, without leave to reapply.

As the landlord has been successful in their application, I allow them to recover the filing fee from the tenant. As the landlord confirmed that the tenant paid the monthly rent for September 2018, the landlord is at liberty to enforce the Order of Possession right away and refund any unused portion of September 2018 rent or to allow the tenant to stay until the end of September 2018.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant a Monetary Order in the landlord's favour in the amount of \$100.00 for the recovery of their filing fee. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 14, 2018

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Residential Tenancy Branch