



# 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

This hearing dealt with the tenants' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 2 Month Notice to End Tenancy Because The Tenant Does Not Qualify For Subsidized Rental Unit dated June 27, 2018 ("2 Month Notice") and for more time to make an application to dispute a notice to end tenancy.

An agent for the landlord ("agent") and the tenants attended the teleconference hearing. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will be emailed to the appropriate party.

### Issues to be Decided

- Should the 2 Month Notice be cancelled?
- Have the tenants provided sufficient evidence to support an extension of time to dispute a notice to end tenancy under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on January 1, 2012. The tenants' rent is subsidized and the landlord is a housing society and each year an annual review is done to confirm that the tenants continue to qualify for subsidized housing.

The tenants claim that they were out of the country when the 2 Month Notice was served on June 28, 2018 by posting to the rental unit door and by sending by registered mail. The registered mail tracking number has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website information the registered mail package was signed for and accepted on July 15, 2018. As a result, I find the tenants were sufficiently served as of July 15, 2018. The tenants provided a copy of their plane ticket departing Vancouver on May 27, 2018; however, the tenants failed to provide their return plane ticket in evidence. The tenants claim they returned to Canada on August 20, 2018 and did not dispute the 2 Month Notice until August 29, 2018. The tenant was unable to explain why the person who signed for and accepted the registered mail package on July 15, 2018 did not dispute the 2 Month Notice.

The reason listed on the 2 Month Notice indicates "The tenant no longer qualifies for the subsidized rental unit". The landlord submitted evidence to support the reason stated on the 2 Month Notice.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, section 49.1 of the *Act* applies and states:

#### **Landlord's notice: tenant ceases to qualify for rental unit**

**49.1** (1) In this section:

**"public housing body"** means a prescribed person or organization;

**"subsidized rental unit"** means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2) Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

**(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.**

**(6) 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**

**(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

**(b) must vacate the rental unit by that date.**

[My emphasis added]

Based on the above, I find the tenants had 15 days from July 15, 2018 to dispute the 2 Month Notice which the tenants failed to do. As a result, I will now deal with the tenants' evidence for their request for more time to make an application to dispute a notice to end tenancy.

Section 66 of the *Act* applies and states that a time limit may be extended for exceptional circumstances and Residential Tenancy Branch Policy Guideline #36 –

Extending a Time Period, indicates that a party not knowing the applicable law or procedure is not a considered “exceptional” circumstances to justify an extension of time to make an application to cancel a Notice to End a Tenancy. I have carefully considered the reasons as claimed by the tenants and find that the tenants have provided insufficient evidence to support an exceptional circumstance under section 66 of the *Act*. I note that the tenants failed to provide a copy of the return plane ticket and also provided no explanation during the hearing as to why the person who signed for and accepted the registered mail package on July 15, 2018 did not apply to dispute the 2 Month Notice. Based on the above, **I dismiss** the tenants’ request for an extension of time to make an application to cancel a Notice to End Tenancy due to insufficient evidence.

Based on the above, **I dismiss** the tenants’ application in full without leave to reapply and I uphold the 2 Month Notice as I find the 2 Month Notice complies with section 52 of the *Act*. The agent confirmed that the tenants have paid for use and occupancy for October 2018. Therefore I find the tenancy ended on August 31, 2018 which is the effective date of the 2 Month Notice. Section 55 of the *Act* applies and states:

**Order of possession for the landlord**

**55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if**

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application** or upholds the landlord's notice.

[My emphasis added]

As the parties confirmed that money has been paid by the tenants for use and occupancy for October 2018 and I find that the 2 Month Notice complies with section 52 of the *Act*, I grant the landlord an order of possession **effective October 31, 2018 at 1:00 p.m.**

As the tenants did not dispute the 2 Month Notice within the required 15 day timeline and have failed to provide sufficient evidence to support an extension of time to make an application to cancel the 2 Month Notice, I find it is not necessary to consider the landlord’s supporting evidence of why the 2 Month Notice was issued.

Conclusion

The tenants' application is dismissed without leave to reapply, due to insufficient evidence.

The 2 Month Notice is upheld and the landlord is granted an order of possession effective October 31, 2018 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 12, 2018

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Residential Tenancy Branch