



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNQ MT FFT**

### Introduction

This is an application by the tenant pursuant to the *Residential Tenancy Act* (“the *Act*”) for the following:

- An order to cancel a Two Month Notice - Tenant does not Qualify for Subsidized Rental Unit (“Two Month Notice”) pursuant to section 49;
- An order for more time to apply to cancel the Two Month Notice pursuant to section 66; and
- Reimbursement of the filing fee pursuant to section 72.

This matter was set for hearing by telephone conference.

The tenant attended. LS, ST and CB attended as agents for the landlord (“the landlord”). Both parties had an opportunity to present affirmed testimony and documentary evidence as well as examine the other party and call witnesses.

The landlord acknowledged receipt of the tenant’s Application for Dispute Resolution. I find the landlord was served pursuant to section 89 of the *Act*.

The tenant testified she submitted 325 pages of evidentiary documents on October 31, 2018 to the Residential Tenancy Branch without notifying the landlord or providing the landlord with a copy as required by Rule 3.15 of the *Rules of Procedure* of the RTB. As the landlord did not receive the documents and first learned of the filing during the hearing, the landlord objected to the documents being considered.

Section 3.17 of the *Rules of Procedure* states that evidence not provided to the other party may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion under Rule 3.17 to determine whether to accept documentary or digital evidence that does not meet the criteria established provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The tenant testified the documents were bank documents and financial records that precede this application. The tenant stated the material filed did not contain the financial information requested by the landlord. The evidence was not new and was available to the tenant at the time she filed her application.

I find the tenant is not prejudiced if I do not consider the evidence. As an adjournment would be necessary to allow the landlord to receive and review the evidence, I find the landlord would be prejudiced if I considered the evidence.

Considering the testimony of the parties and criteria of Rule 3.17, I find I will not consider the evidence submitted by the tenant on October 31, 2018 in my decision.

### *Preliminary Issue*

At the outset of the hearing, the tenant requested an adjournment of the hearing. The tenant testified she had “not been feeling well” and needed more time to prepare for the hearing of her application. The tenant did not submit any medical documents or evidence in support of her claim.

The landlord opposed the application for the adjournment.

The landlord testified the unit is a subsidized rental unit pursuant to section 49.1 of the *Act*. As a condition of the tenancy, the landlord stated the tenant is required to meet eligibility criteria related to income and other standards. The landlord testified the tenant failed to comply with the requirements to provide financial information and the landlord had accordingly determined the tenant ceased to qualify for the unit. The landlord issued the Two Month Notice under section 49.1(2) of the *Act* on October 5, 2018. The Notice states the following reason, “The tenant no longer qualified for the subsidized rental unit.” The effective date of the Notice was December 31, 2018.

The landlord served the tenant with the Two Month Notice by registered mail on October 5, 2018. The landlord provided the Canada Post tracking number referenced on the first page of the decision. Under section 90 of the *Act*, the Two Month Notice is deemed received by the tenant five days after mailing, that is, on October 10, 2018.

The tenant acknowledged receipt of the Two Month Notice, a copy of which the landlord submitted. The tenant filed an Application for Dispute Resolution on October 11, 2018.

The landlord stated the request by the tenant for an adjournment was part of the tenant's ongoing delaying tactics. The landlord annually required the tenant to provide the same financial information since the tenancy started in 2007. The landlord referred to many letters to the tenant beginning May 8, 2018 to obtain the required information to determine whether she qualified for the unit and the rate of rent payable. The landlord testified these efforts were ineffective and the tenant refused or failed to provide the information requested.

Rule 6.4 of the Residential Tenancy Branch *Rules of Procedure* sets out the criteria for granting an adjournment:

*Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*

- (a) the oral or written submissions of the parties;*
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;*
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and*
- (e) the possible prejudice to each party.*

I considered the criteria in Rule 6.4 and the testimony of the parties. I declined to adjourn the tenant's hearing at her request. The tenant did not provide any evidence in support of her assertion she "needed more time" and was not feeling well. The tenant appeared articulate and coherent in providing affirmed testimony and did not testify she

was unwell at the time of the hearing. The tenant did not state she needed the adjournment to get documentary evidence, to call witnesses, or to recover from an identified health condition. The tenant did not assert she needed time to obtain information that would be relevant to this matter or would aid in its determination. I find the tenant had ample notice of the hearing which has been convened at her own request. Finally, I find that rescheduling the hearing would unfairly prejudice the landlord who testified there had already been substantial delay at a time when many people were on the waiting list for subsidized housing.

I informed the tenant I would not adjourn the hearing, and the hearing continued as scheduled.

Section 55 of the *Act* requires that when a tenant submits an Application 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 is compliant with section 52 of the Act.

#### Issue(s) to be Decided

Is the tenant entitled to the following:

- An order to cancel a Two Month Notice - Tenant does not Qualify for Subsidized Rental Unit ("Two Month Notice") pursuant to section 49;
- An order for more time to apply to cancel the Two Month Notice pursuant to section 66; and
- Reimbursement of the filing fee pursuant to section 72.

#### Background and Evidence

I have reviewed all evidence and testimony before me that I accepted for consideration in this matter in accordance with the Rules of Procedure, including the landlord's 50-page evidence package. However, I refer only to the relevant facts and issues in this decision.

The unit is in a subsidized housing complex. The landlord testified the parties entered into a tenancy agreement on November 15, 2007 as well as an Addendum for Units Where the Rent is Related to the Tenant's Income ("Addendum"). The landlord annually determines the tenant's eligibility to rent the unit and the amount of her rent based on information the tenant is required to provide. The current rent is \$748.00 monthly

payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit to the landlord of \$250.00 which is the landlord holds.

The landlord submitted as evidence a copy of the tenancy agreement and Addendum, both of which the tenant signed. These documents set out the tenant's obligations to provide financial and other information to the landlord to assess eligibility for the subsidized unit and the amount of the rent.

The Addendum states in part as follows:

*The landlord and tenant acknowledge that the rent of this unit is related to the income of the tenant. [...] The tenant's rent contribution will be calculated according to rent scales provided in the operating agreement the landlord has signed with Canada Mortgage and Housing Corporation (CMHC) or British Columbia Housing Management Commission (BCHMC), which rent scales may be revised from time to time by CMHC or BCHMC....*

#### **1. Information Required to Calculate Tenant Rent Contribution**

*In order for the landlord to calculate the tenant rent contribution, the tenant agrees to [...] provide such proof of income and assets as required by the landlord.*

*The tenant's provision of this information is material and fundamental to this tenancy agreement.*

#### **2. Failure to Disclose or Misrepresentation**

*[T]he tenant also agrees that if the tenant fails to disclose or misrepresents any information requested by the landlord to allow the landlord to determine the applicable Net Rent Contribution, or for audit purposes, such failure or misrepresentation will be deemed to be a material breach of this tenancy agreement entitling the landlord to end this tenancy agreement....*

The landlord testified the tenant has not provided the financial information to the landlord which the terms of the tenancy agreement and the Addendum require the tenant to provide. The landlord testified to sending or delivering letters and documents to the tenant on the following dates requesting specific financial information, including the following:

- Letter to tenant dated May 8, 2018 with Subsidy Application Form regarding Annual Income Review and copy of tenant checklist;
- Letter to tenant dated July 11, 2018 asking for specified information;
- Letter to tenant dated August 2, 2018 noting the failure to provide the specified information and setting a deadline of August 10, 2018;
- Letter to tenant dated August 15, 2018 advising tenant that effective September 1, 2018, the landlord withdrew the subsidy because of the tenant's failure to provide information; the landlord notified the tenant she may be served with a Two Month Notice as she no longer qualified for a subsidy;
- Letter to tenant of September 12, 2018;
- Two Month Notice served on October 10, 2018 requiring the tenant to vacate the unit on December 31, 2018 as she no longer qualified for the subsidized unit.

The landlord submitted copies of the above correspondence and documents. The tenant acknowledged receipt. The landlord also submitted testimony and notes regarding efforts to call the tenant or conversations with her repeatedly requesting the financial information. The landlord testified that the tenant submitted some evidence, but the tenant has not provided the following despite repeated requests: 2017 Income Tax Return with Employment T'4 slips, 2017 CRA Notice of Assessment, Statement of Earnings for 2018 for two employers, bank account summaries, and explanations for certain deposits noticed on bank statements.

The tenant stated she provided all the financial information to the landlord that the landlord requested. The tenant testified she personally delivered the requested information to an agent of the landlord who was not present at the hearing. The landlord requested and obtained a ten-minute adjournment of the hearing to contact the agent; the landlord reported that the agent had not received any additional documents.

The landlord testified that the tenant ceased to qualify for the subsidized unit.

### Analysis

The landlord must now show on a balance of probabilities, that is, it is more likely than not, that the tenancy should be ended for the reasons identified in the Two Month Notice. In the matter at hand, the landlord must demonstrate that the tenant fails to qualify for subsidized housing.

I find the landlord served the tenant with the Two Month Notice on October 15, 2018 pursuant to sections 88 and 90 of the *Act*. I find the Two Month Notice complies with section 52 of the *Act*.

I find the terms of the tenancy agreement and the Addendum required the tenant to provide the financial information requested by the landlord to consider her eligibility for subsidized housing and the amount of rent payable. I find the landlord has made considerable effort over a significant period to obtain certain information from the tenant. I find the tenant has failed to provide the information despite repeated requests and warnings. I find the tenant is in breach of her obligations under the tenancy agreement and Addendum in failing to meet the landlord's criteria and provide the financial information requested. I find the landlord has properly determined that the tenant ceased to qualify for the rental unit. I find the landlord has established cause for ending the tenancy of the subsidized rental unit pursuant to section 49.1(2) and dismiss the tenant's claim to cancel the Two Month Notice without leave to reapply.

I now consider whether the landlord is entitled to an order of possession. Pursuant to section 55(1) of the *Act*, the director ***must*** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenants' application is dismissed.

As I found above, the Two Month Notice complies with section 52, and I have dismissed the tenant's application, I therefore grant the landlord an order of possession, effective 1:00 PM on December 31, 2018, the effective date of the Two Month Notice.

The tenant requested an order for more time to apply to cancel the Two Month Notice pursuant to section 66. However, the tenant applied to cancel within the time limits of the *Act*. The tenant did not provide any evidence with respect to this application. Accordingly, I dismiss this aspect of the tenant's claims without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant the landlord an order of possession which is effective at 1:00 PM on December 31, 2018. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order 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: November 21, 2018

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Residential Tenancy Branch