



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW HEARING DECISION**

Dispute Codes      OPQ, FFL

### Introduction

A hearing was originally held on November 2, 2018 to deal with a landlord's application for an Order of Possession based on *2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit*. The tenant was notified of the originally scheduled hearing by registered mail sent to the tenant on September 25, 2018. On November 2, 2018 the landlord appeared for the hearing and the Arbitrator granted the landlord's request for an Order of Possession

The tenant applied for review consideration of the November 2, 2018 decision and on November 13, 2018 an Arbitrator granted the tenant's request by ordering a review hearing because the tenant demonstrated he attempted to connect to the November 2, 2018 teleconference call but was unable to attend due to circumstances beyond his control that were not anticipated.

Both parties appeared at the review hearing. At the outset of the review hearing, I informed the parties that the purpose of this review hearing is to determine whether the decision and Order of Possession issued on November 2, 2018 should be upheld, varied or set aside pursuant to section 82(3) of the Act.

The tenant proceeded to request that the review hearing be adjourned primarily because of medical reasons. I requested the tenant provide greater detail to which he stated that the reason he required an adjournment was because he has testing to be done at the hospital on December 28, 2018; he has an appointment with the sleep clinic on January 2, 2019; and, he has an appointment with a dermatologist on January 14, 2019. The tenant also stated that he was unable to obtain legal representation and he was "uncomfortable" proceeding on his own. The tenant claimed that all of the legal representatives in the City were busy due to a tent city. The landlord objected to

adjourning the proceeding, pointing out that much time has passed since the Notice to End Tenancy was issued.

Rule 7.9 provides criteria that I must consider in deciding to grant or disallow a party's request for adjournment. I have reproduced Rule 7.9 below:

**7.9 Criteria for granting an adjournment**

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I was unsatisfied that the tenant's future medical appointments impede the tenant's ability to participate in today's hearing. In the absence of anything to corroborate his position with respect to a lack of legal resources in the city I was not satisfied that legal representation could not be obtained by the tenant exercising due diligence. Nor, was I satisfied that adjourning this matter to a later date would result in a resolution of the matter and I find the landlord has been waiting several months for resolution to this matter. Therefore, I declined to grant the tenant's request for adjournment.

The tenant also stated that this matter should not be resolved by way of the Residential Tenancy Branch and that it should be resolved by way of an aboriginal dispute resolution tribunal or a federal authority since he was an aboriginal person occupying a rental unit intended to be provided to aboriginal families. I noted that the subject rental unit is not located on treaty lands and the landlord is a housing organization that provides subsidized housing to persons of aboriginal decent under an operating agreement with BC Housing. The tenancy agreement also states that the *Residential Tenancy Act* applies to the agreement between the parties. Therefore, I was satisfied that the tenancy agreement between the parties falls under provincial jurisdiction, and more specifically, the *Residential Tenancy Act* that I am bound to uphold as a delegated authority of the Director of the Residential Tenancy Branch.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and should the decision or Order of Possession issued on November 2, 2018 be confirmed, varied or set aside?

Background and Evidence

The tenant has been occupying the subject rental unit since August 1, 2012. The parties executed the most recent tenancy agreement reflecting a start date of April 1, 2014. The rent is subsidized and subject to annual income reviews and a tenant must have dependant(s) under 19 years old in order to qualify for a three bedroom unit such as the one occupied by the tenant. The tenant's current rent is \$461.00 payable on the first day of every month.

On June 20, 2018 the landlord sent the tenant a *2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* with a stated effective date of August 31, 2018 via registered mail. The landlord provided the registered mail receipt, including tracking number, as proof of service. The tenant explained that he attempted to talk to the landlord's agents on multiple occasions and one of the agents told him he only had so much time to dispute the 2 Month Notice; however, the tenant never did file an Application for Dispute Resolution to dispute the 2 Month Notice.

The landlord had originally submitted that the tenant failed to provide all the necessary documents to determine his income and then the landlord determined the tenant no longer had any dependent(s) under 19 years old living with him. The tenant confirmed that he does not have any dependant(s) under the age of 19 years residing with him and that he occupies the rental unit by himself. However, the tenant was of the position that his children are still his family and according to the landlord's vision statement the landlord provides housing to families. The tenant acknowledged that he has to downsize to a smaller unit but stated he needs more time to do so. The tenant stated he is disabled, on disability income, and attends school. The tenant requested that if the 2 Month Notice is upheld that he be given until the end of February 2019 to vacate the unit. The landlord was agreeable to an Order of possession with an effective date of February 28, 2019.

Analysis

The 2 Month Notice before me was issued under section 49.1 of the Act and it meets the form and content requirements of section 52 of the Act.

Section 49.1 of the Act provides that a landlord may end the tenancy of a subsidized rental unit if the tenancy agreement provides that the tenancy may be ended where the tenant, or other occupants as applicable, cease to qualify for the rental unit.

Where a tenant receives a 2 Month Notice issued under section 49.1, section 49.1(5) provides that the tenant has 15 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not file to dispute the 2 Month Notice by filing an Application for Dispute Resolution, section 49.1(6) provides that 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.

Section 55 provides for the ways a landlord may obtain an Order of Possession. Section 55(2)(b) provides that a landlord may request an Order of Possession of a rental unit where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The landlord sent the tenant the subject 2 Month Notice by registered mail on June 20, 2018 and the tenant is deemed to have received it five days later pursuant to section 90 of the Act. Accordingly, the tenant had until July 10, 2018 to dispute the 2 Month Notice. The tenant did not dispute the 2 Month Notice within time, or at any time, and time limit to do so has passed long ago. Accordingly, I find the tenant is conclusively presumed to have accepted that the tenancy would end by virtue of section 49.1(6) of the Act.

Where a tenant is already presumed to have accepted the end of tenancy by failing to dispute the Notice, the hearing set to deal with the landlord's request for an Order of Possession is not the venue for a tenant to dispute the reasons for issuance of the Notice. Rather, the relevant issue(s) to determine is when the Notice was served upon the tenant; whether the tenant disputed the Notice; and, whether the Notice meets the form and content requirements of section 52 of the Act. I have determined these factors and I find the criteria for granting an Order of Possession to the landlord under section 55(2)(b) have been met. Therefore, I find the landlord is entitled to an Order of Possession as requested.

My finding is consistent with the findings made by the Arbitrator on November 2, 2018; however, considering the landlord was agreeable to an Order of Possession with an effective date of February 28, 2019 so as to accommodate the tenant, I vary the original

decision and I provide an Order of Possession with an effective date of February 28, 2019 in place of the Order issued on November 2, 2018.

Provided to the landlord with this decision is an Order of Possession that is effective at 1:00 p.m. on February 28, 2019.

### Conclusion

The landlord is entitled to an Order of Possession, as found in the original decision dated November 2, 2018. Based on the landlord's agreement to give the tenant more time to vacate the rental unit, I set aside the Order of Possession that was issued on November 2, 2018 and I replace it with the Order of Possession that accompanies this Review Hearing Decision. The Order of Possession provided with this decision is effective at 1:00 p.m. on February 28, 2019.

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: December 20, 2018

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Residential Tenancy Branch