



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT COMPANY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNQ MT FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- More time to file their application pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy (the "2 Month Notice") Because the Tenant Does not Qualify for Subsidized Rental Unit pursuant to section 49.1; and
- authorization to recover the filing fee from the landlord pursuant to section 72..

The landlord did not attend this hearing which lasted approximately 15 minutes. The tenant appeared and was given a full opportunity to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that he was served with a copy of the landlord's 2 Month Notice dated November 14, 2018 by having it posted on the rental unit door sometime in November 2018. The tenant said that they filed the application for dispute resolution on December 5, 2018 and served it on the landlord by registered mail. The tenant provided a Canada Post tracking number as evidence of service. Based on the evidence I find that the landlord was deemed served with the tenant's application and evidence on December 10, 2018, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to additional time to file their application to dispute the 2 Month Notice?

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for their application?

### Background and Evidence

The tenant testified that the current monthly rent is \$320.00 payable on the first of each month for this periodic tenancy. The tenant said that they are aware of the requirement to submit a declaration of income and assets to verify that they qualify for the rental unit.

The tenant said that since being served with the 2 Month Notice they have provided copies of the information requested to the landlord and are awaiting confirmation that they qualify for the rental unit. The tenant said that as they were awaiting cancellation of the 2 Month Notice by the landlord they delayed filing their application for dispute resolution until December 5, 2018.

### Analysis

The tenant provided undisputed evidence as the landlord did not attend the hearing.

Section 49.1 provides that a tenant may dispute a notice under this section by making an application within 15 days after receiving the notice. While the tenant has applied for an extension of time to make an application pursuant to section 66 of the *Act* I find that there is insufficient evidence as to the date the tenant was served with the 2 Month Notice.

The 2 Month Notice is dated November 14, 2018. The tenant was unable to testify the exact date that they received the 2 Month Notice. In the absence of the landlord at the hearing to testify as to the date the 2 Month Notice was served I find that there is insufficient evidence as to the date of service. Consequently, while the tenant has applied for more time to file their application I am unable to determine that more time is required. I find that the tenant's application for dispute resolution was sufficiently filed and served within the limitation period in accordance with sections 66 and 71 of the *Act*.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 2 Month Notice. Because the landlord did not attend the hearing, I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 2 Month Notice.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with section 72 of the *Act*, the tenant may make a one-time deduction of \$100.00 from the next rental payment to the landlord.

### Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenant's favour in the amount of \$100.00, which may be implemented by the tenant's one-time reduction of a future monthly rental payment to the landlord of \$100.00.

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: January 17, 2019

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Residential Tenancy Branch