



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPQ, FFL

### Introduction

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

- an Order of Possession on the basis of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72;

The tenant and the landlord's agent (the landlord) appeared at the hearing. All parties present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that he served the notice of dispute resolution package, including the landlord's evidence, to the tenant by way of registered mail. The tenant confirmed receipt of the notice of dispute resolution package and evidence. Therefore, I find that the tenant has been served with the notice of dispute resolution package and landlord's evidence in accordance the *Act*. The tenant testified that she did not provide any evidence.

### Issues(s) to be Decided

Is the landlord entitled to end this tenancy on the basis of the 2 Month Notice and to obtain an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

## Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The parties agreed that the tenancy began on August 01, 2013. The monthly rent was determined to be due on the first day of each month. The tenant was required to pay the monthly rent in the form of a tenant contribution, as the tenant had initially qualified for subsidized rent.

The tenant is currently required to pay a tenant rent contribution in the amount of \$536.00. The parties agreed that the tenant provided a security deposit in the amount of \$450.00 which continues to be held by the landlord. The landlord provided as evidence a copy of a written tenancy agreement signed by both parties, which confirms the details provided by the parties.

The landlord issued a 2 Month Notice, dated September 25, 2018. The landlord testified that the 2 Month Notice was served to the tenant by hand, in the presence of a witness, on September 25, 2018. The 2 Month Notice provided an effective date of November 30, 2018.

The landlord's 2 Month Notice, entered into documentary evidence by the landlord, identified the following reasons for seeking an end to this tenancy by November 30, 2018:

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

The landlord provided undisputed testimony. The landlord testified that the landlord is an organization which is a housing society that adheres to *Residential Tenancy Regulation 2(h)*, such that it has an agreement with the British Columbia Housing Management Commission with respect to the operation of the residential property within which the subject rental unit is located.

The landlord testified that the parties entered into a tenancy agreement whereby the tenant had qualified for subsidized rent. The tenant's rent subsidy, and subsequent tenant rent contribution, is calculated on the basis of the number of occupants residing in the rental unit, and based on the tenant's income, or in the case where additional

occupants are authorized to occupy the rental unit, the cumulative income of the occupants occupying the rental unit.

The tenant was issued a letter dated October 20, 2016, in which she was advised to complete a new application for rent subsidy, as the boyfriend undertook residency periodically at that time as well.

The landlord testified that the tenant's boyfriend undertook permanent residency in the rental unit in March 2018, which constituted a violation of the tenancy agreement signed by the parties. The tenant was issued a letter, dated March 13, 2018, in which the tenant was given the option of adding the additional occupant as an authorized tenant under the tenancy agreement, and reporting the additional income being contributed by the additional occupant to be used in calculating a new rent subsidy.

The tenant was given the alternative option of having the additional occupant vacate the rental unit. The tenant was advised that if the tenant did not remedy the violation of the tenancy agreement, that she would be issued a notice to end tenancy and would be required to vacate the rental unit, as she would no longer qualify for a rent subsidy.

The landlord testified that the additional occupant continues to reside in the rental unit with the tenant, and that such action is not authorized by the landlord; therefore, the tenant continues to be in violation of the tenancy agreement.

The landlord testified that the tenant's boyfriend is an additional occupant residing in the rental unit without authorization, and that as such, the tenant's rent subsidy status needs to be recalculated.

The tenant was issued a letter dated September 15, 2018, in which the landlord informed the tenant that she failed to adhere to the prior requests from the landlord to adhere to the tenancy agreement. The landlord testified that he informed the tenant that she no longer qualified for a rental subsidy and would be issued a 2 Month Notice, since the tenant did not remove the additional occupant from the rental unit, and that the rental subsidy applied to her tenancy would be removed, as per the earlier warnings issued to the tenant.

The landlord seeks an Order of Possession on the basis of the 2 Month Notice to End Tenancy issued to the tenant. The landlord testified that he accepted payment from the tenant, in the amount of \$536.00, for use and occupancy only for the month of January 2019, as the tenant continues to occupy the rental unit. The landlord provided that a

receipt for the acceptance of this payment was issued to the tenant, and that the receipt indicated that the payment was accepted for the purpose of use and occupancy only and was not intended to reinstate the tenancy.

The tenant was provided an opportunity to provide affirmed testimony. The tenant provided that she did not have any testimony to provide. The tenant affirmed that she agreed with the entirety of the landlord's testimony, and agreed that the landlord's testimony represented a true and factual depiction of the facts pertaining to the tenancy.

The tenant testified that she accepts that she is in violation of the tenancy agreement and no longer qualifies for subsidized rent with respect to the rental unit. The tenant affirmed that she acknowledges that the landlord had cause to issue the 2 Month Notice and the reasons for ending the tenancy, as provided on the 2 Month Notice. The tenant provided that she understands that the tenancy will end pursuant to the 2 Month Notice, and that her intention is to vacate the rental unit. The tenant stated that she is actively searching for new accommodation.

### Analysis

Section 49(8) of the *Act* provides that upon receipt of a 2 Month Notice to end tenancy the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within fifteen days of having been duly served with the landlord's 2 Month Notice.

Accordingly, I find that the tenant is conclusively presumed under section 49 (9) of the *Act* to have accepted that the tenancy ends on the effective date of the 2 Month Notice, November 30, 2018, and requires the tenant to vacate the rental premises by that date.

Section 49(7) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]." I am satisfied that the landlord's 2 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*.

During the hearing, the parties agreed that the landlord's testimony represented a true and factual depiction of the issues surrounding the tenancy. The tenant testified that she does not dispute the landlord's testimony, and she does not intend to dispute the landlord's application for an Order of Possession on the basis of the 2 Month Notice.

The tenant accepted the reasons provided for the issuance of the 2 Month Notice and agreed that the tenancy will end in accordance with the 2 Month Notice.

For these reasons set out above, I find that the landlord is entitled to an Order of Possession pursuant to the 2 Month Notice. The Order of Possession must be served on the tenant.

As the tenant has provided full payment in the amount of \$536.00 for occupation of the rental unit during the month of January 2019, I find that the tenant is entitled to occupy the rental unit until the end of January 2019. Therefore, the Order of Possession takes effect by 1:00 p.m. on January 31, 2019.

Since the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

### Conclusion

I allow the landlord's application to end this tenancy based on the 2 Month Notice. The landlord is provided with an Order of Possession effective by 1:00 p.m. on January 31, 2019. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$100.00, to enable the landlord to recover the filing fee from the tenant. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders 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: January 21, 2019

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Residential Tenancy Branch