



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE  
ASSOCIATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPQ

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on October 1, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on the Two Month Notice to End Tenancy for cease to qualify for subsidized rent (the "Two Month Notice") dated September 24, 2019.

The Landlord's Agents, L.S., A.V., and P.L., the Tenant, and the Tenant's interpreter M.E. attended the hearing at the appointed date and time.

L.S. testified that she served the Landlord's Application and documentary evidence package to the Tenant by registered mail on October 8, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the Two Month Notice to End Tenancy for cease to qualify for subsidized rent (the “Two Month Notice”) dated September 24, 2019, pursuant to Section 55 of the Act?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 1, 2006. Currently, the Tenant pays rent in the amount of \$465.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$250.00 which the Landlord continues to hold. The tenancy is still ongoing.

L.S. stated that she served the Two Month Notice to the Tenant by registered mail on September 24, 2019. The Tenant confirmed having received the Two Month Notice on September 26, 2019. The Landlord’s reason for ending the tenancy on the Two Month Notice is;

*“The Tenant no longer qualifies for subsidized rental unit”*

L.S. acknowledged during the hearing that the Landlord’s Application was submitted to the Residential Tenancy Branch on October 1, 2019 seeking an order of possession based on the Two Month Notice dated September 24, 2019.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49.1 of the Act states;

*(2) 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.*

*(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.*

L.S. served the Tenant with the Two Month Notice on September 24, 2019 by registered mail, with an effective vacancy date of November 30, 2019. The Tenant confirmed having received the Two Moth Notice on September 26, 2019. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

After receiving the Two Month Notice on September 26, 2019, the Tenant had 15 days to dispute the Two Month Notice. As such, I find that the Tenant had until October 11, 2019 to either dispute the Two Month Notice or else is conclusively presumed to have accepted that the tenancy ends on the effective date of the Two Month Notice.

As I have found that the Two Month Notice was served on the Tenant on September 26, 2019 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 15 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy.

According to Section 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

*(a) a notice to end the tenancy has been given by the tenant;*

*(b) 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;***

I find that the Landlord submitted the Application on October 1, 2019. As the Tenant had until October 11, 2019 to dispute the Two Month Notice, I find that the Landlord submitted the Application prematurely as the Tenant's time for making the Application to dispute the Two Month Notice had not yet expired. As such, I find that the Landlord is not entitled to an order of possession.

In light of the above, I cancel the Two Month Notice, dated September 24, 2019. I order the tenancy to continue until ended in accordance with the Act.

Conclusion

The Landlord applied for an order of possession prematurely as the Tenant's time for making an Application to dispute the Two Month Notice had not yet expired.

The Two Month Notice issued by the Landlord dated September 24, 2019 is cancelled.

The tenancy will continue until ended in accordance with the Act.

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 07, 2019

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Residential Tenancy Branch