



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Red Door Housing Society and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNQ

### Introduction

This hearing dealt with a tenant's application to cancel a *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit*.

The tenants' son appeared at the hearing and stated his parents, the tenants, asked him to represent them in this matter. An agent appeared on behalf of the landlord.

The tenants had named their son, identified as an occupant on the tenancy agreement, as a tenant in filing this Application for Dispute Resolution. I confirmed with the tenants' son and the landlord's agent that he is not a tenant under the tenancy agreement. As such, I amended the style of cause to exclude the tenants' son as a named tenant with consent of both parties.

I explored service of hearing documents upon each other. The tenants' representative testified that the proceeding package and all of the same documents provided to the Residential Tenancy Branch were sent to the landlord in a single package via registered mail on January 13, 2020. The landlord's agent confirmed receipt of this package; however, during the hearing she pointed out that an "email" contained in the tenant's evidence that I had read aloud during the hearing was not included in the evidence package served to the landlord.

With respect to the "email" evidence provided as evidence by the tenants, I note that in addition to concern that not all of the same documents were served to the landlord, the "emails" were devoid of any dates or email addresses or other typical formatting usually seen in emails. The tenant's representative stated that he had difficulty printing out emails so that they would fit on one page; however, I note that the emails are rather brief, and I found that explanation unconvincing. As such, I have not given the "email" evidence any evidentiary weight and I have relied largely upon the written

communication signed by the landlord's agent and served upon the tenants in a manner that complies with service requirements of section 88 of the Act.

### Issue(s) to be Decided

1. Is there a basis to cancel the *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit*?
2. Is the landlord entitled to an Order of Possession?

### Background and Evidence

The subject tenancy started on February 1, 2001. The rental unit is occupied by the two tenants and their adult son who is over 25 years old.

The landlord is a housing society that provides subsidized housing in accordance with an operating agreement with the British Columbia Housing Management Commission.

Eligibility for the subsidized rental unit is dependant upon family composition and household income and assets. Tenants are required to provide the landlord with information and documentation so that the landlord may determine the tenants' on-going eligibility for the subsidized unit and calculation of the rent subsidy.

On December 19, 2019 the landlord issued a *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit* ("the Notice") to the tenants and sent it to them via registered mail. The reason for ending the tenancy, as stated on the Notice, is that: *the tenant no longer qualifies for the subsidized rental unit*. The tenants received the Notice on December 20, 2019 and filed to dispute it within the time limit for doing so.

On May 22, 2019 the landlord sent the tenants a letter setting out their requirements to provide certain documents to verify their income, assets and student registration documents, among other things. The landlord received documents from the tenants within the deadline set for providing the documents, including a student registration document indicating the tenant's son is a student. The income for the tenant's son was declared as being nil and there was no indication the tenants' son was in receipt of student loans, scholarships or grants.

The landlord submitted that if only a portion of the documentation is provided or if the landlord requires additional documentation the landlord has the right to request further documents from its tenants.

The tenants' son was of the position that if the documentation described in the May 22, 2019 letter is provided the landlord is not at liberty to ask for any more documentation.

On August 28, 2019 the landlord issued another letter to the tenants requesting documentation to verify the amount paid for the school fees for their adult son by providing the receipt issue by the educational institution or the student loan documentation. The landlord's agent stated where a student is over 25 years old, financial assistance to attend school is considered income, except student loans, equalization payments, scholarships or grants.

The tenants' son stated that he provided the landlord with a letter from his aunt with the May 22, 2019 letter confirming that she pays for his schooling. The landlord testified that the letter was not received until after the Two Month Notice was served and that the letter is insufficient in any event since it does not show how much was paid for schooling and family loans are considered income that must be declared and included in the calculation of the subsidy. The tenants' son stated he was unwilling to ask his aunt to provide evidence such as credit card statements or bank statements as to how much she spent on his schooling.

On October 23, 2019 the landlord sent another letter to the tenants requesting more recent student registered documentation; and, bank statements for the two tenants and their adult son for the months of June 2019 through September 2019. The landlord stated that a more recent student registered document was received in the evidence package but that the bank statements were not provided. The tenants' son claimed he provided the more recent student registration documentation before the Two Month Notice was issued but he conceded that the requested bank statements were not provided to the landlord.

Both the August 28, 2019 and the October 23, 2019 letter include statements that failure to provide the required documentation will result in issuance of a Two Month Notice.

The landlord was of the position that it must follow the strict income and asset verification procedures set out in their operating agreement and that the tenants' failure to provide the documentation requested of them resulted in the issuance of the *Two*

*Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit.*

The tenants' son explained that, as a family, they decided not to send the additional documentation to the landlord as they were of the belief the landlord was targeting them and harassing them since other families are not required to provide the same amount of documentation that has been asked of them.

The tenants' son also stated that he thought he had complied with the requirements of the building manager as set out in email communication. The tenants provided nine "emails" as evidence; however, as noted previously, not all of them were served upon the landlord and they are devoid of any date or email address or formatting consistent with ordinary email evidence that indicates the communication was sent via email. Rather, the documents provided merely looked like typed words on a piece of paper.

The landlord's agent submitted that the landlord establishes eligibility criteria as mandated in their operating agreement with BC Housing Management Commission and in conjunction with the rent calculation guidelines, which the landlord provided as evidence. Since the tenants failed to provide the requested documentation the landlord is unable to determine their eligibility to continue occupying the subsidized housing unit.

Analysis

Section 49.1 of the Act provides that a public housing body may end a tenancy for a subsidized rental unit where the tenant(s) no longer qualify for the subsidized unit by serving a *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit*.

"Public housing body", as defined under section 49.1 means a prescribed person or organization. Section 2 of the Residential Tenancy Regulations provide for the entities that meet the definition of public housing body and include:

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;
- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;

(g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:

- (i) the government of British Columbia;
- (ii) the British Columbia Housing Management Commission;
- (iii) the Canada Mortgage and Housing Corporation;
- (iv) a municipality;
- (v) a regional district;

[My emphasis underlined]

In this case, the landlord is a housing society that operates the residential property in accordance with an operating agreement with the British Columbia Housing Management Commission. Accordingly, I find the landlord is a public housing body.

"Subsidized rental unit" is defined under section 49.1 to mean a rental unit that is:

- (a) operated by a public housing body, or on behalf of a public housing body, and
- (b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

[My emphasis underlined]

Term 1 of the tenancy agreement provides as follows:

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1. Under the terms of the agreement with the Commission, the Landlord has selected the Tenant on the basis of the number of Tenants and Occupants and the Tenants and or Occupants income and assets. Any change in the number of Tenants and or Occupants is material and of great importance to the decision of the Landlord to continue or terminate the tenancy. It is a condition of this agreement, in the event of a change in the number of Tenants and or Occupants in the Premises or the Tenants and or Occupants income or assets,, the Landlord will have the right to terminate this agreement. The Tenant agrees to notify the Landlord promptly of any change in the number of Tenants and or Occupants in the Premises and in the Tenants and or Occupants income and assets.

As reflected in term 1 of the tenancy agreement, it is clear that the tenants were selected by the landlord, a public housing body, based on the number of occupants and their income and assets. As such, I find the rental unit is a “subsidized rental unit”.

Section 49.1 of the Act provides that a landlord may end a tenancy for a subsidized rental unit where:

(2) Subject to section 50 *[tenant may end tenancy early]* and if provided for in the tenancy agreement, 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.

[My emphasis underlined]

Term 1 of the tenancy agreement also provides that the tenancy may be terminated where the number of occupants changes or the income and assets of the occupants changes. Term 4 of the tenancy agreement places the burden upon the tenants to declare gross income and assets of all occupants and provide proof with the declaration. Term 4 specifies that the declaration and proof must be provided “at least once” per year “and from time to time as required by the Landlord”. Below, I have reproduced Term 4 of the tenancy agreement.

4. The Approved Economic Rent for the unit is \$ 907<sup>00</sup> a month.  
The Tenant is responsible for the full Economic Rent as stated above or 30% of the gross income of the unit, whichever is higher.  
This Economic Rent may be amended time to time by B.C Housing Management Commission  
The Tenant agrees that at least once in every twelve month period and from time to time as required by the Landlord, to declare the gross income and assets of all the occupants of the unit. Proof of income and assets must be provided with this declaration. Failure by the Tenant to fully and promptly cooperate in making this declaration or any misrepresentation by omission or commission shall be cause for termination of this tenancy.

Under the tenancy agreement, it is clear that the tenants were tenancy formed due to the number of occupants and the income and assets of the occupants. I further find that as a condition of continuing tenancy the tenants would have to continue to be eligible for the subsidized unit and the tenants bear the burden to demonstrate continued eligibility for the subsidized rental unit by way of declarations and proof “as required by the Landlord”.

Term 4 further obligates the tenants to “fully and promptly cooperate in making the declaration” and any misrepresentation or omission is basis for terminating the tenancy.

In this case, the number of occupants has not changed; however, I heard the adult son of the tenants is over 25 and, under the operating agreement, financial assistance or loans from family members to attend school would be considered income and must be declared. This has not been declared and the amount of the assistance has not been verifiable due to the lack of documentation from the tenants to show the amount of assistance. The landlord has requested further documentation of the tenants in order to determine the amount of assistance provided to the adult son and that has not been forthcoming. Nor, have the tenants provided the bank statements requested of them and I find their refusal to provide the requested documentation violates their tenancy agreement. Considering the continued eligibility for the subsidized rental unit hinges on the income and assets of all of the occupants, it is critical that the landlord obtain sufficient documentation to as to make a reasonable determination that all assets and income has been declared. As such, withholding the requested documentation results in the tenants’ eligibility undeterminable.

Pursuant to a judicial review of a previous decision issued by the Director, the Supreme Court of British Columbia, in Hu v. Red Door Housing 2016 BCSC 1238, held that the effect of section 2 of the Regulation is that issues related to rent subsidies, including the internal policies used to calculate rent subsidies, is beyond the jurisdiction of the Director.

Having been satisfied the landlord requested additional documentation from the tenants by way of signed and dated letters served upon the tenants in an attempt to verify that all income and assets were declared, and those letters put the tenants on notice that failure to provide the requested documentation would result in a Two Month Notice; and, considering it is undisputed that the tenants did not provide all of the requested documentation to the landlord, I am of the view the landlord made a reasonable determination that the tenants no longer meet or did not prove that they continue to meet the eligibility criteria for the subsidized rent unit. Therefore, I find the landlord acted reasonably and was within its right to issue the subject Two Month Notice to the tenants.

Upon review of the Two Month Notice, I find that it is in the approved form and it meets the form and content requirements of section 52 of the Act.

In light of the above, I uphold the Two Month Notice and I dismiss the tenant's application.

In keeping with section 55(1) of the Act, I find the landlord entitled to an Order of Possession. Section 55(1) provides:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
  - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

During the hearing, the landlord requested an Order of Possession effective March 31, 2020 in recognition that the tenants paid rent for month of March 2020, albeit subsidized rent determined in the year prior; but that the landlord cannot continue to extend the subsidy pursuant to their agreement with BC Housing.

The tenant's son requested, in the event an Order of Possession was provided, that it reflects an effective date with as much time as possible to vacate the rental unit. The tenants' son stated that his father is awaiting knee replacement surgery and his mother is undergoing radiation treatment. However, I note that there was no direct evidence of such conditions either from the tenants since they did not appear for the hearing or by way of medical documentation.

Upon considering the requests above, I find it would unduly prejudice the landlord to delay the eviction any further as to do so deprives the landlord of rent it would be entitled to receive had all of the income and assets been declared and proven; and, another family in need of a subsidized rental unit must wait until these tenants vacate. Also, of consideration in making my decision with respect to the effective date of the Order of Possession is the tenants' deliberate choices to withhold documentation from the landlord despite being put on notice that failure to do so would result in the termination of the tenancy. Therefore, I grant the landlord's request for an Order of Possession effective.

March 31, 2020.

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Residential Tenancy Branch