



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ, FFT

### Introduction

The tenants filed an Application for Dispute Resolution on February 7, 2020 seeking an order to cancel the 'Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit' (the "Two Month Notice"). The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on March 9, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenants and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution, delivered by the tenant in person, to the landlord's partner on February 10, 2020. The landlord did not serve any documentary evidence for this hearing.

### Issue(s) to be Decided

Are the tenants entitled to an order that the landlord cancel or withdraw the Two Month Notice?

Should the tenant be unsuccessful in seeking to cancel the Two Month Notice, is the landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed the evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenants and landlord both agreed that there was a tenancy agreement in place, signed anew when presented to the tenants on July 1, 2016. There was a security deposit amount of \$475.00 paid, and no pet deposit. The current rent amount is \$1050.00, payable on the first of each month.

The landlord issued this Two Month Notice on January 27, 2020. This was served by email on January 27, 2020. The tenant attending the hearing testified that the landlord's partner gave them a paper copy on this date as well. This method of service is indicated on the Two Month Notice completed by the landlord; the tenants also indicated this was the method of service on the Application for Dispute Resolution.

The landlord spoke directly to this matter in the hearing, stating that the agreement was with two people, and now the tenants are a family of four. He proposed raising the rent amount, because of the increasing cost of utilities due to the increased number of occupants in the rental unit.

The tenants refused this proposal. The landlord stated that he called to the Residential Tenancy Branch who informed him that he could ask the tenants to pay more rent: if the tenants can, they can remain in the unit; if they don't negotiate, you can serve them "a Notice to Move Out." He referred to emails dated January 17 and January 18, 2020 to illustrate the details of this conversation with the tenants.

The tenant in attendance at the hearing presented these two emails into documentary evidence. They spoke to this same dialogue in the emails, wherein the landlord stated "utilities bills are coming bigger we are asking you to pay \$200.00 more or \$100.00 plus 40% of utilities approximately \$200.00 . . ."

The tenants responded by saying "what you are asking is not legal, so we will not be paying any more than what you can legally raise the rent by."

On January 26, 2020 the landlord stated ". . . i am giving you this notice to end our tenancy agreement you must move out by 31<sup>st</sup> march 2020."

In the hearing, the tenant specifically referred to the reason for service of the Two Month Notice, that being: "The tenant no longer qualifies for the subsidized rental unit." They presented that the unit is not subsidized. They presented that they are not receiving a subsidy, and never have.

The landlord confirmed that he is not with an organization that is providing a subsidy. This is a regular basement suite, and not a public housing body.

### Analysis

Section 49.1 of the *Act* provides that a landlord may end a tenancy by giving a Two Month Notice to end the tenancy "if the tenant . . . ceases to qualify for the rental unit."

In this same section, a "public housing body" is a "prescribed person or organization." A "subsidized rental unit" is defined as that "operated by a public housing body" and "occupied by a tenant who . . . met eligibility criteria related to income, number of occupants, health or similar criteria. . ."

In this matter, the landlord bears the onus to prove that the reason for ending the tenancy is valid and sufficient.

Based on the evidence and testimony before me, I find as fact that there was no subsidy arrangement in place, and the tenants have not ceased to qualify for a subsidized rental unit. The landlord confirmed in the hearing that this is not a public housing body.

From this I conclude there was no agreement or formal arrangement whereby the tenants violated a term regarding subsidy. With no specific or applicable term of the tenancy agreement violated by the tenants, I find there is no valid reason for the landlord to issue the Two Month Notice.

For these reasons, I order the Two Month Notice to be cancelled.

### Conclusion

For the reasons above, I order that the Two Month Notice issued on January 27, 2020 is cancelled and the tenancy remains in full force and effect.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 25, 2020

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Residential Tenancy Branch