



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mole Hill Community Housing  
Society and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNQ

### Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the "2 Month Notice") pursuant to section 49.1;

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. The tenant primarily spoke on his own behalf with the assistance of an advocate.

As both parties were present service of documents was confirmed. The parties each testified that they were served with the respective materials. Based on the testimonies I find the parties each duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

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

### 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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agreed on the following facts. This periodic tenancy began in February 2018. The current monthly rent is \$1,585.00 payable on the first of each month. The rental unit is a two-bedroom subsidized unit managed by the landlord under the Provincial Housing Program.

The tenant resides full time in the rental unit. The tenant shares custody of their minor daughter with the child's mother and the daughter resides in the rental unit with the tenant some of the time.

The signed tenancy agreement includes the following paragraph under the section titled Additional Terms of Agreement.

20. Overhoused

Our Operating Agreement with the British Columbia Housing Management Commission requires us to have a clause allowing for termination of this Tenancy Agreement is a Tenant becomes overhoused. Overhousing can occur when one or more members of the family moves out leaving the Tenant in the Rental Unit that is larger than the number of remaining residents are entitled to under the National Occupancy Standards in our Operating Agreement with the Commission. Therefore, if a tenant becomes overhoused they will be required to vacate the Rental unit and Notice to End Tenancy may be served by the Landlord to enforce this clause.

The landlord issued a 2 Month Notice dated July 9, 2020 stating the reason for the tenancy to end is that the tenant no longer qualifies for the subsidized rental unit. The landlord submits that in order to qualify for residence in a two-bedroom suite, a household must meet the National Occupancy Standard which provides that:

A dependent child who resides with their parent(s) a minimum of 40 per cent of the time will qualify as a permanent member of the household when determining eligibility and appropriate unit size.

The landlord submits that the tenant's household composition changed as of January 2019, the date of a court order which set out parenting time for the tenant's child and entered on August 21, 2019. The landlord submits that a redacted version of the order was provided by the tenant and reviewed to assess the tenant's continuing qualification for residence in the rental unit. The landlord submitted the copy of the court order into documentary evidence. The landlord submits that they calculated, based on the court

order, that the tenant has custody of their child for only 28% of the calendar year and therefore fail to qualify for the two-bedroom suite.

The tenant submits that their daughter continues to occupy the rental unit at least 40 % of the time. The tenant testified that while the court order of January 29, 2019 provides that the tenant has parenting time from Friday to Sunday two weeks out of every three, the order further allows the parties to agree to other times. The tenant submits that in accordance with the order the parenting time has been altered by the parents a number of times to accommodate summer travel, holidays, health concerns and work commitments. The tenant explained that currently, due to medical issues and ongoing global pandemics the parents have agreed to a modified parenting schedule that is not accurately reflected in the January 2019 order. The tenant testified that under the arrangement in place at present, their daughter continues to reside in the rental unit with them at least 40% of the time. Among the materials submitted into documentary evidence are correspondence from the Canada Revenue Agency dated May 19, 2020 and from the child's pediatrician dated April 29, 2020 where the writers acknowledge that the child resides with the tenant part of the time.

### Analysis

While the tenant and their advocate made some submissions on the landlord's operations and their inconsistent implementation of the National and Provincial housing standards and various alleged breaches of legislation, governing documents and the principles of procedural fairness, I find that it is beyond the scope of this hearing to make a finding on these issues. I find that it is unnecessary to make a determination on these issues to determine the matter in the application before me, the validity of the 2 Month Notice of July 9, 2020.

Where a tenant applies to dispute a 2 Month Notice pursuant to section 49.1, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 2 Month Notice is based. In the present case the landlord must show on a balance of probabilities that the tenant has ceased to qualify for the rental unit as they no longer meet the eligibility criteria.

I accept the submission of the landlord that a term of the tenancy agreement provides that the occupant of the rental unit qualifies for residence under the National Occupancy Standards. I further accept the landlord's submission that in order for an occupant to qualify for the rental unit their household must include a certain number of individuals residing permanently in the suite. The landlord submits that their understanding of the

standards is that a dependent child who resides in the suite with their parent 40 % of the time qualifies as a permanent member of the household for determining the family unit's eligibility for the rental suite.

The landlord calculates, based on the contents of the court order dated January 29, 2019 that the tenant's child is present in the rental unit less than 40% of the calendar year. While I accept that this interpretation may be supported if viewing the court order in isolation, I find that in reviewing the evidence of the parties in its totality the landlord has not met their evidentiary onus on a balance of probabilities.

In order to accept the landlord's conclusion that the tenant's child resides in the rental unit less than 40% of the time, I would need to disregard the additional correspondence between the parties, the tenant's testimony and the portion of the court order stating that the parties are at liberty to agree to other parenting time arrangements in writing. I find that I am not satisfied that the landlord has established the basis for their issuance of the 1 Month Notice on the basis of a single court order issued over a year ago. It is reasonable that a court order pertaining to parental time would be modified by the parties as the child's needs changes over time. I find that this would be especially so for a young child whose needs and circumstances change rapidly.

While I accept that the tenant has provided the landlord with limited information and documentation regarding their household composition, I find that what information has been submitted does not sufficiently support the conclusion that the tenant no longer qualifies for the rental unit. I find that the portion of the court order of January 2019 dealing with regular parenting time does not outweigh the correspondence from the tenant explaining their present parenting arrangements, the correspondence from the family doctor and Canada Revenue Agency and the testimony of the tenant. Viewed in its entirety I find that the landlord has not met their evidentiary burden to establish that there is a basis for the tenancy to end.

For these reasons I allow the tenant's application to cancel the 2 Month Notice.

Conclusion

I allow the tenant's application to cancel the 2 Month Notice of July 9, 2020. The notice is of no further force or effect. This tenancy continues 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: August 31, 2020

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Residential Tenancy Branch