



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ-MT FFT

### Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy (the "2 Month Notice") pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy pursuant to section 49; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties were represented at the hearing by their respective agents who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's 2 Month Notice on October 1, 2020. The tenant filed their application to dispute the 2 Month Notice on October 25, 2020 and served the landlord with their materials. The landlord confirmed receipt of the tenant's materials. Based on the testimonies I find the parties duly served with these materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that while they have uploaded some materials to the Branch, they have not served any materials on the tenant. As evidence must be served on a party I exclude all of the landlord's evidentiary materials as they testified that they have not served it on the tenant.

At the outset of the hearing the tenant said that they filed an application to dispute a 2 Month Notice to End Tenancy Issued Because the Tenant No Longer Qualifies for a Subsidized Unit, but this was in error and the 2 Month Notice is actually issued for Landlord's Use of Property. The application was amended pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure to reflect the correct 2 Month Notice.

Issue(s) to be Decided

Is the tenant entitled to additional time to file their application to dispute the 2 Month Notice?

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

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

The rental unit is a basement suite with the landlord occupying the main floor of the building. The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use indicating that the rental unit will be occupied by the landlord or their family member on October 1, 2020. The tenant confirmed that they were served with the 2 Month Notice on October 1, 2020. The tenant filed their application for dispute resolution to dispute the 2 Month Notice on October 25, 2020.

The tenant's agent said that the personal tenant attempted to file their application online within the statutory deadlines but faced difficulties navigating the online system. The tenant eventually attended a Service BC office where they received assistance in filing their application.

A copy of the 2 Month Notice was issued into evidence. The landlord explained that a member of the landlord's family, their adult son, intended to move from the main floor into the basement suite to have greater independence and privacy.

Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that "exceptional implies that the reason for failing to do something at the time required is very strong and compelling." Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 49(8)(a) of the *Act* provides that a tenant may dispute a 2 Month Notice issued by an individual landlord who intends in good faith to occupy or have a close family member occupy the rental unit, by filing an application within 15 days after the date the tenant receives the notice. Section 49(9) provides that if a tenant does not make an

application in accordance with subsection (8) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present circumstances the tenant confirmed that the landlord's 2 Month Notice was served on them on October 1, 2020. The tenant filed their application for dispute resolution on October 25, 2020, outside of the 15 days provided by the *Act*. The tenant gave some vague explanation of confusion with the filing process, but no evidence was provided of any earlier attempts made by the tenant to file their application or what issues they faced with the system provided. Based on the little submissions made, I am unable to find that the confusion faced by the tenant are properly characterized as exceptional circumstances.

There is no evidence that the dispute resolution system intake system was malfunctioning, offline or otherwise inaccessible by the tenant. I find little evidence that the obstacles the tenant faced in filing their application was anything more than unfamiliarity with an online system. There is no evidence that the system was not functioning in its intended manner or that the tenant faced accessibility issues. The tenant has provided so little evidence in support of their position that I am unable to conclude that there were exceptional circumstances to allow an extension of a time limit established by the *Act*.

I find that the tenant has failed to file an application for dispute resolution within the 15 days of service granted under section 49(8)(a) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the 2 Month Notice, December 1, 2020.

I find that the landlord's 2 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 2 Month Notice has passed, I issue a 2 day Order of Possession.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 15, 2021

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Residential Tenancy Branch