



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, OLC, FFT

### Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package in person. The tenant stated that it was served on December 16, 2020, the landlord stated that it was served on December 19, 2020.

At the outset, the tenants' application was clarified in that the named landlord was incorrect. Both parties confirmed that the named landlord was an agent and that the actual landlord was M.T.A.R.M.H.S.(as listed now on the cover of this decision) as listed on the submitted copy of the signed tenancy agreement.

Both parties agreed that the tenants served the landlord with the submitted documentary evidence in person. Both parties also agreed that the landlord served the tenants with the submitted documentary evidence by posting it to the rental unit door. Neither party was able to provide a date of service but confirmed receiving it. Neither party raised any issues regarding service of the documents.

Extensive discussions over a 35 minute period resulted in that the tenants confirmed that they only wished to request an order to cancel the 2 month notice issued by the landlord. The tenants stated that despite selecting requests to suspend or set conditions on the landlord's right to enter the rental unit or for the landlord to comply, the tenants seek an order to cancel the 2 month notice as the other request were made in error. The landlord confirmed that despite receiving the tenants' requests they understood that the tenants were disputing the 2 month notice. On this basis, the tenants' application shall be amended to reflect the true application of the tenants. Cancellation of the 2 month notice and recovery of the filing fee if successful. The hearing shall proceed on this basis.

I accept the affirmed testimony of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act with the notice of hearing package and the submitted documentary evidence.

During the hearing the tenants' ability to understand the proceedings was questioned by the Arbitrator. The tenant repeatedly stated that he understood the proceedings and was able to continue. The landlord made no comments. The tenant was cautioned that any further point in the hearing if the tenant was found to not understand the proceeding, the hearing would be stopped. The tenant indicated his understanding and the hearing continued.

During the hearing the tenant requested an adjournment to allow him to submit further evidence. The Tenant was advised about Rules of Procedure 3.13, Applicant evidence provided in single package states in part,

Where possible, copies of all of the applicant's evidence available should be submitted to the Residential Tenancy Branch directly or through a Service BC Office and served on the other party in a single complete package.

The tenant was also advised about Rule 3.14, Evidence not submitted at the time of Application for Dispute Resolution states in part,

Except for evidence related to an expedited hearing, documentary and digital evidence that is intended to be relied upon on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

In this case, the tenant provided no details of why supporting evidence was not initially provided. On this basis, the tenant's request to adjourn the hearing was denied. The hearing proceeded.

#### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?

Are the tenants entitled to recovery of the filing fee?

#### 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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Extensive discussions with the tenants revealed that they could not identify a copy of the 2 month notice for which they seek to cancel submitted in their documentary evidence. Further discussions with the landlord revealed that the landlord had submitted a copy of the 2 month notice. On this basis, the hearing proceeded.

Both parties confirmed that the landlord served the tenants with a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated December 4, 2020 by posting it to the rental unit door on December 4, 2020. The 2 Month Notice states an effective end of tenancy date of February 29, 2021 and the reason selected as:

The tenant no longer qualifies for the subsidized rental unit.

The landlord claims that the tenants no longer qualify to live in the 2 bedroom unit at Dockside as the landlord believes that the tenant's son does not reside with the tenant atleast 40%of the time. The landlord stated that this rental building is a family residence and that the tenant no longer qualifies.

The landlord provided written materials which states that a child who resides with his parent a minimum of 40% of the time qualifies as a permanent member of the household. The landlord referred to a Facebook page by the tenant's son, N.M. which states that he lives in Surrey as opposed to the tenant's residence in Richmond.

The landlord stated that a letter dated October 2, 2019 was sent to the tenant referencing a meeting that took place on September 24, 2019 between the two parties

and the requirement for the tenant to provide his son's school registration verification to include the tenant's address. The landlord's letter clarified that the current 2 bedroom housing is for families only with dependent children.

The tenant stated that he was not given any notice of this letter dated October 2, 2019. The landlord responded stating that the tenant was served with it but cannot provide any service details.

The landlord stated that a follow up letter dated November 6, 2020 re: Overhoused Situation was sent requesting the tenant's court-ordered custody documentation, stating that the son will be living with the tenant 40% of the time and to present his son's school registration verification to demonstrate that he is in full time school. In this letter the tenant was cautioned that the tenant must provide this documentation or that he will be presented with a 2 month notice to end tenancy.

The tenant stated that he does not recall receiving this letter. The landlord responded stating that the tenant was served with this letter on November 6, 2020 in person but cannot provide any service details.

The landlord stated that another follow up letter dated November 16, 2020 was sent to the tenant offering a 1 bedroom rental to the tenant as he no longer meets the criteria for living in the 2 bedroom family rental unit. The letter now identifies his son at age 19 and that the tenant is no longer eligible to live in the 2 bedroom rental unit as the son is no longer a dependent.

The tenant stated that he does not recall receiving this letter, but later confirmed receipt of it on February 23, 2020. The landlord responded stating that the tenant was served with this letter on November 16, 2020 in person but cannot provide any service details. The landlord further argued that as N.M. was now an adult unless he attended a college or trade school full time, the tenant would no longer qualify for housing in this subsidized rental unit and would need to find alternative housing.

The tenants argued that they still qualify and referred to a copy of a registration form for college but did not reference a copy of it in the tenant's evidence submission. The landlord argued that none was on file, but that this was a college application for attendance and that no registration information was provided by the tenant to the landlord. The landlord stated that as of this date the tenant has not provided any evidence that the tenant's son is enrolled full time in college or a trade school.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, both parties confirmed that the landlord served the tenants with a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated December 4, 2020 by posting it to the rental unit door on December 4, 2020. The 2 Month Notice states an effective end of tenancy date of February 29, 2021 and the reason selected as:

The tenant no longer qualifies for the subsidized rental unit.

In this case, the landlord provided undisputed affirmed evidence that this is a 2 bedroom rental unit for families and that the tenant no longer qualifies to live in the 2 bedroom unit at Dockside as the landlord believes that the tenant's son is an adult who is not attending college or a trade school to qualify as a dependent. The landlord stated that the tenant "overhoused" and should be living in a 1 bedroom rental unit which the landlord has offered to the tenant. The tenant provided testimony arguing that his son is registered in college and has referred to a college registration form not in evidence. Despite repeated attempts at locating this document the tenant was unable to locate and identify it. The landlord has argued that the form received by the landlord from the tenant was a college entrance application form and not registration.

I find on this basis, that I prefer the evidence of the landlord over that of the tenant in that the reasons provided by the landlord are valid in that the 2 bedroom rental unit requires a dependent for the tenant. The landlord has provided undisputed evidence that a letter dated October 2, 2019, followed by a letter dated November 6, 2020 from the landlord regarding "overhoused" situation and another letter dated November 16, 2020 follow up letter to the "overhoused" situation. Despite the landlord not providing any service details for these letters, the tenant repeatedly answered if he had received them, "I don't recall". I find on this basis that the tenant does not have any recollection of these letters and the landlord has provided undisputed evidence of service. I find that despite the tenant's arguments that the son is registered in college, no supporting evidence was provided by the tenant to either the landlord or the Residential Tenancy Branch in the past or for this hearing. The 2 month notice dated December 4, 2020 is upheld. The tenant's request to cancel the 2 month notice is dismissed.

Pursuant to section 55 of the Act, the landlord is granted an order of possession to be effective 2 days after it is served upon the tenants.

Conclusion

The landlord is granted an order of possession.

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: March 08, 2021

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Residential Tenancy Branch