



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 pursuant to section 49.1.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenants. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision. The tenant had an advocate who spoke on her behalf.

### Preliminary Issue – Landlords evidence

The advocate argued that the landlord's documentary evidence should not be accepted for this hearing as it was served after the first hearing date. The landlord testified that due to a death in the family, she was having difficulty preparing for this hearing and didn't serve the documentation to the tenant or the Branch until February 6, 2021, even though the original hearing was January 29, 2021. Residential Tenancy Rules of Procedure addresses the issue as follows:

#### **Rule 3.15 Respondent's evidence provided in single package:**

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete

package. The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch **not less than seven days before the hearing.**

Based on the above, I find that the landlord has not complied with the above rule and as a result; I have not considered the landlords documentation for this hearing.

#### Issues to be Decided

Should the Two Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

#### Background and Evidence

The landlord gave the following testimony. The landlord testified that the reason that she issued a notice to end tenancy is because the tenant has not provided updated occupant information to justify her occupying a three-bedroom unit which requires at least 4 people. The landlord testified that the tenant presently qualifies for a two-bedroom based on the information that she has. The landlord testified that she would much rather have the tenant provide updated information than to pursue this notice. The landlord testified that she has no issue with the tenant residing in the unit if she provides the information. The landlord requests an order of possession based on the Two Month Notice to End Tenancy issued on October 22, 2020 with an effective date of December 31, 2020.

The advocate made the following submissions on behalf of the tenant. The advocate submits that as the landlord has not submitted documentation in accordance with the Residential Tenancy Branch Rules of Procedure, they have not provided proof to support the notice and it should be cancelled.

#### Analysis

The landlord was very forthcoming during the hearing and was very clear that she would like to continue the tenancy as long as the tenant provide the information required. The landlord was also very realistic in the prospect of being successful in this application due to the lack of documentation to support her position. The parties indicated that they

may try to have a discussion to resolve this issue. However, in the matter before me on this date, the landlord has not provided sufficient evidence to support the issuance of the notice, accordingly; I cancel the Two Month Notice to End Tenancy dated October 22, 2020, it is of no effect or force.

### Conclusion

The Two Month Notice to End Tenancy is cancelled, the tenancy continues.

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 09, 2021

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Residential Tenancy Branch