



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding M'akola Housing Society and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

TT: CNQ-MT  
LL: OPQ, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the "Act").

The Tenant's Application for Dispute Resolution was made on June 7, 2021 (the "Tenant's Application"). The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated April 26, 2021 (the "Two Month Notice"); and
- more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the Two Month Notice;

The Landlord's Application for Dispute Resolution was made on June 10, 2021 (the "Landlord's Application"). The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on the Two Month Notice; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 AM on October 5, 2021 as a teleconference hearing. The Landlord's Agents S.B. and I.B. attended the hearing at the appointed date and time. No one attended for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agents and I were the only persons who had called into this teleconference.

At the start of the hearing, the Landlord's Agents stated that they served the Landlord's Notice of hearing and documentary evidence package to the Tenant by posting it to the Tenant's door.

### Preliminary Matters

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...

I find that the Landlord did not serve the Tenant in a manner required by section 89(1) of the *Act*. As such, I dismiss the Landlord's Application with leave to reapply.

As no one attended the hearing for the Tenant, the Tenant's Application to cancel the Two Month Notice is dismissed without leave to reapply.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*. As such, the hearing continued to consider if the Landlord is entitled to an order of possession based on the Two Month Notice.

The Landlord's Agents were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy

Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Landlord entitled to an order of possession based on the Two Month Notice, pursuant to Section 55 of the *Act*?

#### Background and Evidence

The Landlord's Agents stated the following; the tenancy began on August 16, 2010. Currently, the Tenant pays rent in the amount of \$1,450.00 which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$468.00 which the Landlord continues to hold. The tenancy is still ongoing.

The Landlord's Agents stated that the Two Month Notice dated April 26, 2021 with an effective date of June 30, 2021 was posted to the Tenant's door on April 26, 2021. The Landlord's reason for ending the tenancy on the Two Month Notice is;

*"The Tenant no longer qualifies for subsidized rental unit"*

The Landlord's Agents stated that the Tenant resides in a subsidized rental unit, requiring the Tenant to have her children in her care while renting the rental unit. The Landlord's Agents stated that the Tenant has not had custody of her children for most of the tenancy. The Landlord's Agents stated that the Landlord has provided the Tenant with a written request to provide confirmation that there is a plan in place to return the Tenant's children to the Tenant's care. The Tenant has not yet provided such confirmation and continues to not qualify for the rental unit she occupies. As such, the Landlord is seeking to end the tenancy.

#### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 49.1 of the Act states;

(2) a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I accept that the Landlord's Agents served the Tenant with the Two Month Notice on April 26, 2021 by posting it to the Tenant's door. Pursuant to Section 88 and 90, I find that the Tenant is deemed to have received the Two Month Notice three days later, on April 29, 2021.

After receiving the Two Month Notice on April 29, 2021, the Tenant had 15 days to dispute the Two Month Notice. As such, I find that the Tenant had until May 14, 2021 to either dispute the Two Month Notice or else is conclusively presumed to have accepted that the tenancy ends on the effective date of the Two Month Notice.

I accept that the Tenant applied to cancel the Two Month Notice on June 7, 2021, which is outside the time limit set out in the *Act*. Furthermore, no one attended the hearing for the Tenant which has resulted in the Tenant's Application being dismissed without leave to reapply.

Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

I find that the Two Month Notice complies with the requirements for form and content. I further find the Landlord has provided sufficient evidence to demonstrate that the Tenant no longer qualifies for subsidized rental unit.

As the effective date of the Two Month Notice has passed I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order should be served onto the Tenant as soon as possible.

### Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenants fail to comply with the order of possession it may be filed in 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: October 05, 2021

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Residential Tenancy Branch