



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ, OLC, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy because the tenant no longer qualifies for subsidized housing; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

One of the named tenants attended the hearing with an agent, both of whom gave affirmed testimony. The other tenant named in the application is the child of the tenant who attended. The landlord also attended and gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The landlord has erroneously provided evidence that does not relate to this tenancy, but to another tenancy. Also, during the course of the hearing the tenant and the tenant's Agent advised that none of the landlord's evidence was provided to the tenant. The landlord was not able to provide proof of serving any evidence, and considering that at least some of the landlord's evidence uploaded to the case management system does not apply to this tenancy, I am not satisfied that the landlord has provided any evidence to the tenants, and I decline to consider it.

During the course of the hearing I explained that the Rules of Procedure require that multiple applications contained in a single application must be related. The tenants' agent asked that the tenants' application for monetary compensation be dismissed with leave to reapply, and I so order.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

**The landlord** testified that this month-to-month tenancy began on July 1, 2013 and the tenant still resides in the rental unit. Rent is subsidized and the tenant's share is \$466.00 payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a townhouse, and the landlord does not reside on the property.

The landlord further testified that on June 30, 2021 the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit (the Notice) by posting it to the door of the rental unit. Copies of 2 pages, marked "front" and "back" have been provided by the tenant for this hearing, dated June 30, 2021 and containing an effective date of vacancy of August 31, 2021. The reason for issuing it states, "The tenant no longer qualifies for the subsidized rental unit."

The rental complex is for families, and the tenant must have a child living with the tenant. The tenant's daughter has not been living with the tenant. The landlord became aware of that in February, 2021.

The BC Recovery Benefit was offered to tenants during COVID and single people received \$500.00 while families got \$1,000.00. The landlord went through some recycling and found a Notice of Determination that the tenant had discarded which said that the tenant is entitled to the \$500.00 benefit for a single person. The landlord had seen the tenant walk by, and the Notice of Determination had been put in the recycling and had been opened and the letter was in the envelope. It is the tenant's duty to

advise the landlord of who resides in the rental unit or if there have been changes. The landlord didn't act on it, but waited for the tenant to inform the landlord.

The landlord talked to the tenant's mother asking if the child was still living there and was told that the child did live there but was not there quite often; was always at a friend's. The President of the Board of Directors gave notice to inspect the suite due to the condition the tenant's previous suite was left in and found no evidence of the tenant's daughter living there. The tenant said that the child still lived there but left for work early. There was no bedding in the child's bedroom, just a mattress. It appeared that the tenant had split her clothing into 2 bedroom closets, one with tops and the other only had pants, which was suspicious. The tenant's child is aged 17.

**The tenant** testified that the rental unit is the daughter's primary residence, and she does sleep in her bedroom. However, the tenant's daughter spends about 1/3 of her time with her grandmother, and about 20% of her time with her boyfriend. Photographs of the child's bedroom have also been provided for this hearing.

**The tenant's agent and witness** testified that he is the child's God Father and visits the child at the rental unit, taking her for dinner as frequently as he can. The witness also knows the child's grandmother who lives a long way away and the child is at her grandmother's often. The child told the witness that she has some clothing at her grandmother's residence, because taking the bus is very difficult, with transfers required and is time consuming.

The tenant's witness is certain that he would be the 2<sup>nd</sup> person to be told if the child didn't live there.

#### SUBMISSIONS OF THE LANDLORD:

There is no evidence by the tenant to prove that the tenant's daughter lives there, and testifying that she's gone 70% of the time, the landlord submits that the tenant does not qualify for the rental unit.

#### SUBMISSIONS OF THE TENANT'S AGENT AND WITNESS:

The Details section of the Notice has not been filled in and does not indicate what the reason for issuing the Notice is, so it has been impossible to prepare for the hearing. The testimony of how often the tenant's daughter is away is ball-park figures only and there is no reason that the tenant does not qualify for the subsidized housing.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, not on the tenant to establish that the tenant qualifies for the housing.

In this case, the tenant has provided 2 pages only of a 4-page form of the Notice. A landlord is required to serve all 4 pages of the Notice, and I am not satisfied that the landlord has done so.

The photographs provided by the tenant show a bedroom with bedding as well as some other personal items on the dresser. The landlord testified that during an inspection there were only tops in one bedroom closet and bottoms in the other bedroom closet, which is not evident in the tenant's photographs. I am not satisfied that the landlord has established that the tenant's daughter does not reside in the rental unit with the tenant. Therefore, I cancel the Notice and the tenancy continues.

The tenant did not lead any evidence with respect to the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the application, with leave to reapply.

Since the tenant has been partially successful, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it by filing it for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

### Conclusion

For the reasons set out above, the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: November 18, 2021

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Residential Tenancy Branch