



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRIGHTSIDE COMMUNITY HOMES  
FOUNDATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPQ, FFL

### Introduction

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

- an order of possession pursuant to section 55;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence in two separate packages via Canada Post Registered Mail on November 6, 2021. Both parties also confirmed the tenant did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord 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.

The landlord seeks an order of possession and a monetary claim for recovery of the \$100.00 filing fee.

Both parties confirmed the landlord served the tenant with the 2 month notice to end tenancy because the tenant does not qualify for subsidized housing dated June 2, 2021 posted to the tenant's rental unit door on June 2, 2021. During the hearing the tenant confirmed that he did not file an application to dispute the notice as he was busy "dealing with" his children.

The 2 month notice sets out an effective end of tenancy date of August 31, 2021 and the reason selected was:

*The tenant no longer qualifies for the subsidized rental unit.*  
[reproduced as written]

The landlord provided written submissions which states:

*The tenant is required to submit income documents (tax assessment 2020, notice of assessment 2020) in order for us to calculate rent and apply for subsidy to BC Housing for his rental unit.*  
[reproduced as written]

The landlord stated that the tenancy agreement requires that the tenant to provide income documents to allow the landlord to qualify the rental unit for subsidized housing. The landlord stated that in 2020 this requirement was waived due to Covid, but that in 2021 it was still a requirement as per the original signed tenancy agreement. The landlord stated that the request for the tenant's documents were made, but that as of the date of this hearing the tenant has not complied.

The tenant argued that he did comply and the information was provided to the landlord's agents. The tenant stated that he spoke to an unidentified male agent of the landlord who confirmed that he had all the documents except for his tax return. The tenant stated that he is unable to obtain a copy of his tax return. The tenant stated that the landlord has likely lost the documents provided. The tenant stated that he had proof via email of compliance but has since lost access to his email.

The landlord argued that the loss of documents was “highly unlikely” as she has no information on file to show that the tenant has submitted all of the required information.

The tenant stated that he was unable to identify the landlord’s agent who confirmed receipt of his documents.

### Analysis

Section 49.1 of the Act state that a landlord may end a tenancy in respect of a rental unit by serving a notice to end tenancy to the tenant when a tenant ceases to qualify for a rental unit. The tenant was required to demonstrate that the tenant met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

In this case, both parties confirmed the landlord served the tenant with the 2 month notice dated June 2, 2021 posted to the rental unit door on June 2, 2021.

The tenant confirmed during the hearing that he did not file an application to dispute the notice. I note for the record that the tenant had 15 days from the date he received the notice to dispute it pursuant to Section 49.1 (5), but Subsection 49.1 (6) also states that a tenant who has received this notice under this section is conclusively presumed to have accepted that the tenancy ends on the effective end of tenancy date of the notice and must vacate the rental unit by that date.

I also find that despite the tenant arguing that he did comply with the landlords’ request to provide income documentation, the landlord disputed this claim stating that there are no records of receiving the tenant’s documents. The tenant argued that he spoke to an agent of the landlord who confirmed that he had complied. However, the tenant was unable to identify the individual to whom he spoke nor was he able to provide any supporting evidence of complying with the landlord’s documentation requests. The tenant also argued that he had supporting evidence via email of compliance but has since lost access to his email and was unable to provide it. On this basis, I find that the tenant was failed to provide sufficient evidence to satisfy me of his compliance with the landlord’s request for income documentation. Pursuant to Section 49.1 (1) the tenant was required to demonstrate that he met the eligibility criteria related to income as failed to do so. Pursuant to Section 49.1(2), I find that the landlord’s 2 month notice dated June 2, 2021 is upheld and the landlord is granted an order of possession. As the effective end of tenancy date has now passed, the landlord’s order of possession shall be effective 2 days after it is served upon the tenant.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The landlord is granted an order of possession.  
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders or those Courts.

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: December 03, 2021

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Residential Tenancy Branch