



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNR, CNQ**

### **Introduction**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- Cancellation of a Two Month Notice - Tenant does not Qualify for Subsidized Rental Unit (“Two Month Notice”) pursuant to section 49.

DK attended as agent for the landlord (“the landlord”). The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The landlord testified that the landlord had not issued a 10 Day Notice. Accordingly, the application to cancel the Notice was dismissed without leave to reapply.

The parties provided their email addresses for receipt of the Decision.

### **Issue(s) to be Decided**

Is the tenant entitled to a cancellation of the Two Month Notice?

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The parties submitted considerable written and oral evidence in a 60-minute hearing. Not all this evidence is referenced in the Decision. I do not address every argument of the parties. Only significant facts and arguments regarding my findings and Decision are referenced.

The landlord testified that the tenant no longer qualifies for subsidized housing and requested an Order of Possession pursuant to a Two Month Notice.

The tenant requested that the Notice be cancelled, and the tenancy continue.

### *Tenancy Agreement*

The landlord testified as follows regarding their provision of housing and the tenancy agreement with the tenant.

The landlord testified the unit is a subsidized rental unit pursuant to section 49.1 of the *Act*.

The landlord is a charitable organization providing subsidized housing. They have an agreement with the British Columbia Housing Management Commission (the "Commission") which subsidizes the cost of the housing and restricts the use of the property to social housing.

The landlord submitted a copy of the tenancy agreement. The tenant's monthly tenancy began on August 1, 2010, at a monthly rent of \$1,080.00.00. The cost of the housing is subsidized by the Commission. The current subsidized rental amount for this unit is \$555.00.

The tenant provided a security deposit of \$540.00 at the beginning of the tenancy which the landlord holds.

The unit is a 3-bedroom apartment. The tenants are the applicant and his spouse. They are the only occupants permitted in the unit along with their two children.

At the beginning of the tenancy, the tenant lived in the unit with his spouse and two children. The agreement states that any change in the number of tenants and occupants is material to the tenancy and allows the landlord to terminate the tenancy:

**1. Selection of Tenants**

- a. Under the Terms of the Agreement with BC Housing Management Commission (referred to as "the Commission") the Landlord has selected the Tenant on the basis of the number of Tenants and Occupants and the Tenants and/or Occupants income and assets.
- b. Only persons named in the Tenancy Agreement have a right to reside in the Rental Unit as a Tenant and/or Occupant.

The agreement further states that if the tenant is overhoused, the landlord may issue a Two Month Notice:

**20. Overhoused**

Our Operating Agreement with the Commission requires us to have a clause allowing for termination of this Tenancy Agreement if a Tenant becomes overhoused.

Overhousing can occur when one or more members of the family moves out leaving the Tenant in the Rental Unit that is larger than the number of remaining residents are entitled to under the National Occupancy Standards in our Operating Agreement with the Commission.

Therefore, if a Tenant becomes overhoused they will be required to vacate the Rental Unit and a Notice to End a Tenancy may be served by the Landlord to enforce this clause.

***Tenant's family***

The tenant's spouse and two children moved out of the unit in July 2021. In the landlord's written submissions, they stated the tenant's spouse notified the landlord on July 7, 2021 and the landlord subsequently learned the departed spouse is seeking separate subsidized housing.

As the tenant no longer qualified for the subsidized 3-bedroom unit, the landlord issued a Two Month Notice requiring the tenant to move out.

The landlord testified as follows. The tenancy agreement authorizes the landlord to terminate the tenancy because of the change in number of occupants which affects the subsidy from the Commission.

#### *Two Month Notice*

The parties agreed the landlord served the tenant with the Two Month Notice on dated February 7, 2022, under section 49.1(2) of the *Act*. The effective date of the notice was April 30, 2022. The Notice states the following reason, "The tenant no longer qualified for the subsidized rental unit."

A copy of the Notice was submitted which is in the standard RTB form. The Notice states the tenant may dispute the Notice within 15-days.

The landlord testified they sent the Two Month Notice to the tenant by registered mail to the tenant mailed on February 7, 2022. The landlord submitted a copy of the covering letter. Under section 90 of the *Act*, the Two Month Notice is deemed received by the tenant 5 days later, February 12, 2022.

A copy of the Notice was submitted which is in the standard RTB form.

The tenant filed an Application for Dispute Resolution to cancel the Two Month Notice on March 11, 2022, outside the 15-day period to dispute the Notice.

Section 55 of the *Act* requires that when a tenant applies 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 complies with section 52 of the *Act*.

#### *Tenant's Submissions*

The tenant testified as follows. He agreed with the background of the tenancy as testified by the landlord. He agreed the Two Month Notice was mailed to him by registered mail as the landlord testified.

However, the tenant submitted that he was in quarantine in the unit when the Two Month Notice was mailed and did not pick up the registered mail from his mailbox until February 25, 2022.

Accordingly, the tenant argued the 15-day period to file a dispute did not begin until February 25, 2022. Consequently, he asserts the Application for Dispute Resolution was filed on March 11, 2022, within the 15-day period. The tenant provided no documentary evidence in support of his explanation for the delay in picking up his mail or in the subsequent delay in applying to cancel the Two Month Notice.

The landlord claimed the tenant no longer qualifies for the unit as his spouse and children have moved out. The tenant acknowledged that his spouse and children had moved out of the unit.

However, the tenant testified that his son has subsequently moved back in. He also testified his daughter is living in the unit 40% of the time. The tenant testified a “best friend” and a “family member” are living in the unit as well. They all need the 3-bedroom unit.

The tenant testified he had informed the landlord of the situation and who was living in the unit. He said the landlord had consented to their presence and agreed the tenancy could continue.

The tenant submitted no documents to support in support of his assertion that the landlord had agreed the tenant could keep the unit in his changed circumstances or had agreed to the unauthorized occupants.

The landlord denied any contact by the tenant explaining recent changes in occupancy or any such agreement. The landlord stated that having a “best friend” and “family member” live in the unit amounted to unauthorized occupancy under the agreement which was another ground of eviction. The landlord vehemently denied receiving information as testified or consenting to the tenancy continuing.

The tenant testified he will be homeless if an Order of Possession is granted.

### *Summary*

The landlord requested an Order of Possession effective July 31, 2022.

The tenant requested the Two Month Notice be cancelled and the tenancy continued.

### Analysis

I have reviewed all evidence and testimony before me that I accepted for consideration in this matter in accordance with the Rules of Procedure, including the parties' evidence packages. However, I refer only to the relevant facts and issues in this decision.

The landlord must now show on a balance of probabilities, that is, it is more likely than not, that the tenancy should be ended for the reasons identified in the Two Month Notice.

As acknowledged by the parties, they entered into a tenancy agreement which began on August 1, 2010, at a subsidized monthly rent payable on the first of the month. The tenants were the applicant and his spouse. The tenancy agreement stated the unit is for family housing and the tenants occupied the unit with their two children. The applicant's spouse and two children have since moved out.

I accept the landlord's credible and well-presented evidence in all aspects. I find as follows. The unit is a subsidized rental unit pursuant to section 49.1 (1) which states:

#### **Landlord's notice: tenant ceases to qualify for rental unit**

49.1 (1) In this section:

"subsidized rental unit" means a rental unit that is

- (a) operated by a public housing body, or on behalf of a public housing body, and
- (b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, 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.

The submitted tenancy agreement provides that any change in the number of tenants and occupants is material to the tenancy and allows the landlord to terminate the tenancy. The spouse's departure with the children resulted in the tenant being the sole occupant of a 3-bedroom unit; the tenant was therefore over housed and was no longer eligible for a housing subsidy. The landlord was authorized to issue the Notice pursuant to the Act and the tenancy agreement.

I find the landlord served the tenant with the Two Month Notice on February 12, 2022, pursuant to section 49.1 (2) of the Act which states:

(2) Subject to section 50 [tenant may end tenancy early] and if provided for in the tenancy agreement, 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.

I find the Two Month Notice complies with section 52 of the *Act* as to form and content.

#### *Service of Two Month Notice*

Section 90 of the Act sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing if it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Supreme Court of British Columbia has determined that the deeming presumptions can be rebutted if fairness requires that that be done.

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the

document was received. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make based on all the evidence before them.

The tenant acknowledged receipt of the registered mail send on February 7, 2022, on February 25, 2022. The tenant did not file this application until 14 days later, on March 11, 2022. I acknowledge the tenant claimed he was ill and was in quarantine before February 25, 2022.

In considering the evidence and testimony, I find the tenant has not rebutted the deemed receipt presumption. I find the tenant's evidence did not provide a plausible explanation for the failure of the tenant to have submitted his Application for Dispute Resolution within the 29 days after the deemed service date of February 12, 2022. The tenant submitted no documentary evidence, such as a medical report, stating that he was either in quarantine or unable to file a dispute until March 11, 2022, well after the 15-day period expired.

As the tenant has submitted no documentary evidence supporting his claim that the deeming provision should not apply, I find the tenant was served on February 12, 2022 5 days after the mailing by registered mail under section 90 of the Act.

### Conclusive Presumption

A tenant who has received a Two Month Notice and does not make an application within the time periods authorized by the Act is presumed to have accepted that the tenancy ends of the effective date of the Notice.

Section 49(1) provides:

(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 find as follows. The landlord has properly determined that the tenant ceased to qualify for the rent unit. The landlord has established cause for ending the tenancy of the subsidized rental unit pursuant to section 49.1(2) ,

I find the tenant failed to apply to dispute the Notice and is deemed to have accepted that the tenancy ended on April 30, 2022.

In any event, I find the landlord has met the burden of proof with respect to all aspects of the landlord's request for an Order of Possession. I find the tenant has not established any plausible reason why the Two Month Notice should be dismissed and the tenancy continue. I find the tenant is in breach of the agreement for the reasons stated by the landlord.

Even if the tenant had applied within the 15-day period, I dismiss the tenant's claim to cancel the Two Month Notice without leave to reapply. As the effective date of the Notice has passed, I grant the landlord an Order of Possession effective on two days' notice.

In summary, I uphold the landlord's Two Month Notice, find the tenant has not applied within the dispute period, and, even if he did, he has not established any grounds to set aside the Notice.

Accordingly, as the tenant still occupies the unit, I issue an Order of Possession to the landlord pursuant to section 55(1) effective July 31, 2022.

### Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an Order of Possession effective July 31, 2022.

This Order of Possession must be served on the tenant. The Order may be filed and enforced in the courts of the Province of BC.

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: June 27, 2022

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Residential Tenancy Branch