



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SCHOOL DISTRICT 70  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNQ

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy Because Tenant Does Not Qualify for Subsidized Rental Unit (2 Month Notice).

The tenant, a support person for the tenant, CC (support) and an agent for the landlord, LC (agent) attended the teleconference hearing. As the support person was not present to provide testimony, I heard from the tenant and the agent. The tenant and agent provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me.

The agent confirmed that the landlord did not serve the tenant or the Residential Tenancy Branch (RTB) with any documentary evidence. The agent confirmed that they received the evidence from the tenant, including a late package served just 6 days before the hearing on the agent (3 days before the hearing to the RTB).

### Preliminary and Procedural Matters

The agent confirmed that the landlord is School District 70 (SD70) and as a result and by consent of the parties, the name of the agent has been replaced with SD70 as they are listed as the landlord on the tenancy agreement submitted for my consideration. This amendment is pursuant to section 64(3)(c) of the Act.

In addition, the email address of the agent was provided and both parties were advised that the Decision would be emailed to both parties.

### Issue to be Decided

- Should the 2 Month Notice be cancelled or upheld?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on January 1, 2015. Monthly rent indicates that it is \$500 per month and due on the 1<sup>st</sup> of each month. The tenancy agreement also indicates that monthly rent is subject to rent increases in accordance with the Act. The tenant paid a security deposit of \$250 at the start of the tenancy.

A copy of the 2 Month Notice was submitted in evidence and is signed and dated by the agent. The reason stated on the 2 Month Notice indicates the following:

☒ The tenant no longer qualifies for the subsidized rental unit.

The tenant indicates on their application that they received the 2 Month Notice dated June 22, 2022 on June 24, 2022 as it was posted to their door. The tenant applied for dispute resolution seeking remedy under the Act on July 4, 2022, which is within the 15-day timeline provided under the Act to dispute a 2 Month Notice related to qualification for subsidized rental unit.

The tenant testified that they were not advised in writing or when they signed the tenancy agreement that they were receiving subsidized housing as part of their education assistant (EA) position with SD70 and that the housing would terminate if their position was terminated.

Both parties confirmed that there have been two rent increases during the tenancy. The first rent increase was in January 2019 where rent was increased to \$510 per month and the second rent increase was January 2020 where rent was increased to \$520 per month and has remained so since 2020.

The agent testified that the housing is subsidized by the school district and that the tenant should not be occupying the rental unit as they are no longer employed with the school district. There is no dispute that the tenant was laid off from their EA position June 30, 2017, as that date was not contradicted by the agent during the hearing. In addition, June 30, 2017, was also provided in a November 4, 2022, letter submitted by the tenant, which the agent confirmed receiving and that they had that document before them during the hearing.

There was no evidence presented by the agent that the tenant has been served with other notices to end the tenancy. The agent stated that their “only concern is that the applicant wants to stay there although rent is subsidized.” The tenant denies that they were told rent was subsidized when they signed the tenancy agreement. The tenant also denies that they were told that their housing would end if they were laid off. The tenant understands that the landlord wants the rental unit for teachers; however, the tenant stated that they have been unable to find a rental unit within their budget.

The tenant testified that they are currently separated from their spouse who was listed on the tenancy agreement have an imminent divorce pending so they don't have the option of residing with their spouse as they separated in 2017. The tenant also stated that they don't want to be forced to move in with their boyfriend as it is a new relationship, and they live in different areas of Vancouver Island.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

**2 Month Notice** – I have carefully reviewed the tenancy agreement and I find that it does not indicate that rent is subsidized or that the tenancy is dependant on employment with SD70. Furthermore, section 49.1(1) of the Act defines subsidized rental unit as follows:

**"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.**

[emphasis added]

Based on the above, I find the rental unit does not meet the definition of a subsidized rental unit under section 49.1(1) of the Act. In addition, I find the tenancy agreement is silent in terms of subsidized rent from SD70 and is also silent that the tenancy will only be in effect while the tenant is employed with SD70.

Finally, I find the agent failed to provide sufficient evidence to support what the market value of rent is in BA. Given the above, I find the landlord has failed to meet the burden of proof to support that the 2 Month Notice is valid. Consequently, **I cancel** the 2 Month Notice effective immediately.

Pursuant to section 62(3) of the Act, I also make the following order:

**I ORDER** the tenancy to continue until ended in accordance with the Act.

#### Conclusion

The tenant's application is successful. The 2 Month Notice dated June 22, 2022, is cancelled and is of no force or effect. The tenancy has been ordered to continue until ended in accordance with the Act. This Decision will be emailed to both parties at the email addresses confirmed during the hearing.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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 21, 2022

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Residential Tenancy Branch