



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding British Columbia Housing Management  
Commission and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

Tenant: CNQ-MT, OLC  
Landlord: OPQ

### **Introduction**

On March 31, 2023, the Tenant filed their Application at the Residential Tenancy Branch to dispute the Two-Month Notice to End Tenancy Because the Tenant does not Qualify for Subsidized Rental Unit (the “Two-Month Notice”). They requested more time in which to file their Application, past the 15-day time limit after receiving the One-Month Notice in early March, 2023.

On May 25, 2023 the Landlord applied for an order of possession of the rental unit. With the Tenant’s Application already in place, the Landlord’s Application was crossed to that of the Tenant concerning the same tenancy. The Tenant confirmed they received the Landlord’s Notice of Dispute Resolution Proceeding, as well as the Landlord’s evidence, delivered to them in person.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 10, 2023.

### **Preliminary Matter – Tenant’s Application to cancel the One-Month Notice**

At the start of the hearing, the Tenant advised they provided a copy of the Notice of Dispute Resolution Proceeding to the Landlord. They did this directly to the Landlord’s office on June 26, 2023. The Landlord confirmed they received this document, in the package, on June 27, as it was date-stamped at their office.

The Tenant had three days from when they received that document from the Residential Tenancy Branch on April 6, 2023 to serve that to the Landlord. The Residential Tenancy Branch sent Instructions, the Notice of Dispute Resolution Proceeding, and a proof of service document for the Tenant to complete on April 6, 2023. The Tenant contacted the branch to update their email address on April 14, 2023, then the Residential Tenancy Branch sent the same documents to a different email address specified by the Tenant on that same date.

The email to the Tenant contains the following information:

**Serve Your Notice of Dispute Resolution Proceeding Package to the Respondent(s)**

**You must serve the Notice of Dispute Resolution Proceeding package by Apr 9, 2023 in one of the following ways:**

**Canada Post Registered Mail**

1. Print and prepare **separate** Notice of Dispute Resolution Proceeding packages to serve each respondent
2. Include 1 copy of the Notice of Dispute Resolution package in each envelope
3. Send each envelope by Canada Post Registered Mail. Package(s) must be post marked on or before **Apr 9, 2023**

**In person**

1. Print and prepare **separate** Notice of Dispute Resolution Proceeding packages to serve each respondent
2. Print and bring a proof of service RTB-55 for each respondent to sign acknowledging receipt of the Notice of Dispute Resolution package. Otherwise, bring a witness with you, who can sign to prove service
3. Serve each respondent one copy of the Notice of Dispute Resolution package by hand on or before **Apr 9, 2023**

**Email Service**

You may serve the Notice Package by email only when the other party has provided in writing an email address and agreement to accept documents related to your tenancy by email. You can use the [Address for Service](#) (RTB-51) form to prove that the other party agreed to receive documents by email. If the other party has not agreed to email service, you can [apply online for substituted service](#) using your dispute access code [. . .] or submit a [paper application](#) to the Residential Tenancy Branch.

1. Prepare an Email to be sent to each respondent
2. Attach a copy of the Notice of Dispute Resolution package to each email and send the email on or before **Apr 9, 2023**

The *Act* s. 59(3) sets the duty for an applicant to provide the Notice of Dispute Resolution Proceeding for their application to the respondent. I find the Tenant did not serve the Notice of Dispute Resolution Proceeding for their March 31 Application. The *Act* s. 89 gives the rules of service for an application for dispute resolution. Basically, this is as set out in the message to the Tenant reproduced above. The *Residential Tenancy Branch Rules of Procedure* give specific information on a party serving their documents and evidence to the other party.

For this reason, I dismiss the Tenant's March 31 Application. I find the lack of service for a period of over two full months prejudiced the Landlord's interests in both the tenancy, as well as in this hearing process. The remaining issues from the Landlord's Application are listed below.

#### Issues to be Decided

Is the Tenant entitled to more time in which to file an Application for Dispute Resolution, having exceeded the limit of time in which to do so as prescribed by the *Act*?

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit?

#### Background and Evidence

In this section I set out the evidence, background, as well as the participants' statements that are relevant to my findings and final decision in this matter, set out below.

The Landlord provided a copy of the tenancy agreement in existence between the parties, the details of which the Tenant confirmed in the hearing. Both parties signed the agreement on May 18, 2021 for the tenancy starting on June 1, 2021. The amount of rent is determined on the basis of 30% of the Tenant's gross monthly household income. The agreement specifies that "any change in the income or assets of the tenant . . . is material and of great importance to the landlord." The Tenant agrees to provide a declaration, at least once yearly and "from time to time as required by the landlord."

The Landlord issued the Two-Month Notice on March 3, 2023, posted to the Tenant's door, with the effective date for the Tenant to move out being May 31, 2023. The Landlord indicated on page 2 that the Tenant "no longer qualifies for the subsidized rental unit."

In the hearing, the Tenant stated they received the Two-Month Notice that was attached to their door, approximately March 5, 2023.

The Tenant in the hearing stated they called to the Landlord the next day; however, they did not receive a return call.

The Tenant in the hearing presented that they then received a "declaration of income and assets" form from the Landlord for completion. This is the form that the Landlord periodically requests the Tenant to complete, in order to remain accurate and up-to-date on the Tenant's income situation, in order to determine whether the Tenant qualifies for subsidized housing. The Tenant stated they received this form for completion "within the week." The Tenant understood that their rent would be reviewed, meaning the Landlord would make another determination on their eligibility for the subsidized rental unit, indicating that they could stay in the rental unit.

A caretaker then spoke to the Tenant, querying on the Tenant's final move-out date. At that point, the Tenant called to the Residential Tenancy Branch and the Residential Tenancy Branch advised the Tenant to apply for dispute resolution as against the Two-Month Notice. The Tenant finalized their Application for Dispute Resolution on March 31, 2023.

The Landlord described the "declaration of income and assets" form as pre-generated and sent to any tenant automatically. Because of the Two-Month Notice that was served, the process for evaluating the Tenant's eligibility for subsidized housing was on hold. The form is auto generated to get sent out in a timely manner in any event.

In the hearing, the Landlord also queried whether the Tenant spoke to any "property portfolio assistant" that would supply information to the Tenant. The Landlord reiterated that the Two-Month Notice they served to the Tenant supersedes any process for re-evaluating the Tenant's eligibility for subsidized housing.

### Analysis

In regard to the Tenant's request to file the Application after the dispute period, the *Act* outlines the following:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances. . .

In these circumstances, I find that the Tenant did not prove exceptional circumstances.

The Landlord served the Two-Month Notice to the Tenant by attaching it to the door of the rental unit on March 3, 2023. By s. 90(c) of the *Act*, the document was deemed to be received by March 6, 2023, that is the third day after it was attached to the door. The Tenant had 15 days in which to apply for dispute resolution; that date was March 21, 2022. The Tenant applied on March 31, 2022.

I find the Tenant did not show that exceptional circumstances prevented them from applying within the 15-day time limit. I find the Tenant receiving a form that was a matter of routine in this tenancy does not cancel or indicate the Landlord withdrew the Two-Month Notice, which is a serious matter with immediate implications. There were explicit instructions for the Tenant to apply for dispute resolution within a strict timeline.

I find the Tenant did not make reasonable efforts at verifying with the Landlord whether the Two-Month Notice was cancelled or otherwise annulled. The Tenant was aware of how to contact the Landlord, and I am not satisfied that a single phone call to the Landlord, allegedly unreturned, would effectively end the matter for the Tenant without more inquiries on whether they would be facing eviction.

I find the Tenant did not apply for dispute resolution within the required timeline. I find the Tenant is conclusively presumed under s. 49.1(6) of the *Act* to have accepted that the tenancy ended on the effective date on the Two-Month Notice: May 31, 2023. As such, the Tenant must vacate the rental unit.

For these reasons, I dismiss the Tenant's Application to cancel the Two-Month Notice. This is in addition to the reason I set out above in the preliminary section.

The Tenant's Application for the Landlord's compliance with the *Act* and/or tenancy agreement was based on the reasons for the Landlord issuing the Two-Month Notice. I find this is another indication by the Tenant on their Application that they are challenging the factual basis of the

Two-Month Notice. Given that I have dismissed the Tenant's Application, for two separate reasons, I decline to make a finding on this subject. I dismiss this issue without leave.

Under s. 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied a notice to end tenancy complies with the requirements under s. 52 regarding form and content, I must grant a landlord an order of possession.

I find that the Two-Month Notice complies with the requirements of form and content; therefore, the Landlord is entitled to an Order of Possession.

### Conclusion

For the above reasons regarding their late Application, as well as the delayed service of the Notice of Dispute Resolution Proceeding to the Landlord, I dismiss the Tenant's Application, without leave to reapply.

I grant an Order of Possession to the Landlord effective two days after they serve it upon the Tenant. I provide the Landlord with this Order of Possession in the above terms, and they must serve the Tenant this Order as soon as possible. Should the Tenant fail to comply with this Order of Possession, the Landlord may file this Order with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 11, 2023

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Residential Tenancy Branch