



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing.

### Issue to be Decided

Should the notice to end tenancy be set aside?

### Background and Evidence

The parties agreed that on or about November 29, 2011, the tenants were served with a 2 month notice to end tenancy because they do not qualify for subsidized housing. There was no dispute that the landlord rents exclusively to parties who require a subsidy, those subsidies being granted by BC Housing.

It is a term of the tenancy agreement that the tenants provide information to the landlord each year in support of a subsidy application. The landlord uses that information to determine eligibility for the subsidy.

In 2011, the tenants were required to provide information by the end of July. The landlord asked for proof of income and assets, including a 2010 Notice of Assessment from Canada Revenue Agency. The landlord repeatedly requested that the Notice of Assessment be provided, but as of the date of the hearing, the tenants had still not provided that document. The tenants provided pay stubs as proof of income for the tenant who was employed and the landlord used those pay stubs to calculate an average biweekly income. Based on this information, the landlord determined that the tenants were no longer eligible for a subsidy. The landlord provided the documentation provided by the tenant to BC Housing for their review and the parties agreed that BC Housing confirmed that the tenants were no longer eligible for a subsidy.

The tenants entered the employed tenant's record of employment into evidence and claimed that when comparing the total hours worked with the total salary paid, it was

evident that the employed tenant made just over \$10 per hour and therefore could not possibly have earned what was reflected on the pay stubs relied upon by the landlord in determining the subsidy.

### Analysis

The tenants claim that the landlord relied upon incorrect information when determining their eligibility for a subsidy but even as of the date of the hearing, had not yet provided all of the information to the landlord which they were required to provide. The tenants made the pay stubs available to the landlord and should reasonably have expected that the landlord would rely on this information in their calculations. I am not satisfied that the record of employment contradicts the pay stubs as the stubs could easily have indicated a period in which the tenant worked overtime and was paid at a higher than normal rate.

The tenants chose to limit the information made available to the landlord and failed to provide all of the information required. I am not persuaded on the evidence that there was any fault in the landlord's calculations and accordingly I find that the landlord has proven that the tenants no longer qualify for subsidized housing. Although the tenants claim that their economic situation has changed significantly, I can only examine their situation at the time the application for rent subsidy was submitted to the landlord and I have therefore made my decision on that basis. I dismiss the tenants' claim.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

### Conclusion

The claim is dismissed and the landlord is granted an order of possession. I find it appropriate to end the tenancy on January 31, 2012 and the order is effective on that date.

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 29, 2011

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Residential Tenancy Branch