



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

MT CNC

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing.

This is the Tenant's application to:

- Be allowed more time to make this application to cancel a Notice to End Tenancy; and
- Cancel the Notices to End Tenancy for Cause, dated November 17, 2008 and December 19, 2008.

Issue(s) to be Decided

- (1) Should the Tenant be successful in her application under Section 66(1) of the Act to be allowed more time to file this Application; and if so
- (2) Should the Notices to End Tenancy for Cause be cancelled ?

Preliminary Matter

There are two Notices to End Tenancy for Cause on the case file. One was issued on November 17, 2008 and personally served on the Tenant on November 18, 2008. The other Notice was issued on December 19, 2008, and personally served on the Tenant

on December 19, 2008. The Tenant filed her Application for Dispute Resolution on December 22, 2008.

At the onset of the Hearing, the Landlords explained that they were proceeding with the Notice to End Tenancy dated December 19, 2008.

With respect to the Notice to End Tenancy dated November 17, 2008, the Landlords had reached a verbal agreement with the Tenant not to enforce the Notice on the understanding that the parties would enter into a Mutual Agreement to End Tenancy effective January 31, 2009. The Landlords agreed to do this in order to give the Tenant more time to find suitable alternate accommodation. The Tenant subsequently declined to sign the mutual agreement, and therefore the Landlords issued a second Notice to End Tenancy on December 19, 2008, with an effective date of January 31, 2009.

Section 47(4) states:

“A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.”

The Tenant filed her Notice of Dispute Resolution two days after the date she received the Notice issued December 19, 2008, and is within the time limit to file her application. Therefore this application can proceed.

Background and Evidence

The Tenant entered into a month-to-month tenancy agreement commencing December 1, 2001. The rental unit is in subsidized housing, with the monthly rent being calculated according to the monthly income of the Tenant.

The Landlords issued the Notice to End Tenancy for Cause alleging a breach of a material term of the tenancy agreement that was not corrected within a reasonable time

after written notice to do so.

Landlords' evidence:

The Landlords allege that there is an occupant in the Tenant's unit who is living there on a day-to-day basis. This particular occupant is known to the Landlords, was living with the Tenant some years ago, and was evicted for cause. He disappeared for several years and reappeared for several extended periods in 2008/09 (April – July and October – present). The Landlords' position is that the Tenant's "declarations of household" for 2007 and 2008 do not include the other occupant. Furthermore in March, 2008, the Tenant signed another Offer of Accommodation, but did not include the other occupant in the agreement.

The Landlords testified that the other occupant moved back in with the Tenant from early April until mid July, 2008 to help her with post-operative healing. This exceeded the two week period the Landlords agreed to. The Landlords testified that the other occupant moved back in with the Tenant again in October, 2008, and remains there.

The Landlords testified that the other occupant provided documents purporting to prove that he was not living in the Tenant's rental unit, but had his own residence. The Landlord submitted that when the Landlord attempted to verify the documents and evidence the other occupant provided, they turned out to be false.

It is the Landlords' position that the other occupant is not their tenant and his extended stays in the Tenant's rental unit are a breach of a material term of the Tenancy Agreement.

The Landlords stated that they remained open to signing a Mutual Agreement to End Tenancy with the Tenant, if the Tenant would agree to vacate the rental unit in the not-too-distant future. In the alternative, the Landlords asked for an Order of Possession

effective February 28, 2009, in order to give the Tenant more time to find suitable accommodation.

Tenant's evidence:

The Tenant testified that the other occupant had his own separate residence, but was visiting her daily in order to assist her. The Tenant stated that she had back surgery in December and was unable to care for herself and her children without the aid of the other occupant. The Tenant testified that she had the help of a nurse, but that the nurse was only providing 6 hours of assistance a week, which was not enough.

The Tenant asked that if the Notice to End Tenancy was upheld, she be allowed to remain in the rental unit until March 31, 2009.

Analysis

The Landlord provided documents, copies of which were duly served on the Tenant, including, but not limited to:

- A copy of the Tenancy Agreement, signed by both parties, and dated November 6, 2001. Included in the Tenancy Agreement, under paragraphs 11 and 12, are clauses which state, in part:

“11. Disclosure

If the tenant is eligible for a rent subsidy from BC Housing, the tenant:

- (c) Agrees that if the tenant fails to disclose or misrepresents any information required by the landlord to allow the landlord to determine the applicable Tenant Rent Contribution or for audit purposes, such failure or misrepresentation will be deemed to be a material breach of this tenancy agreement entitling the landlord to end this tenancy agreement;”

“12. Occupants and invited guests

12.1 The landlord has selected the tenant on the basis of the number of tenants and occupants among other criteria. The tenant agrees that only those persons listed as tenants and occupants, including those listed in the List of Additional Occupants, if any, are allowed to live in the

residential premises during the term of this tenancy, unless the landlord otherwise consents in writing.

12.2 Any change in the number of tenants and occupants is material and of great importance to the landlord and entitles the landlord at its discretion to end this tenancy agreement. The tenant agrees to notify the landlord promptly of any change in the tenants and occupants. If the tenant is eligible for a rent subsidy, the tenant agrees that any person that resides with the tenant in excess of 14 days, whether or not consecutive, in any 12 month period, without the written consent of the landlord, will be considered an occupant and:

(a) that person's income must be declared to the landlord immediately."

- Copies of Declarations of Household for 2007 and 2008, together with a New Offer of Accommodation, confirming that the Tenant is the sole tenant, along with her children;
- Copies of documents, provided by the Tenant, purporting to prove that the other occupant was residing elsewhere. There are hand-written notes on these copies indicating that the Landlord called the other occupant's landlord in May of 2008 and confirmed that the other occupant was no longer living there and had been evicted for cause. There were anomalies on the rent receipt the other occupant provided. The receipt was dated January 1, 2008, but claimed to be for rent for the month of January, 2009. The original date is crossed out and unreadable, with January, 2009 written in its stead. The handwriting differs from the handwriting on the remainder of the receipt.
- Warning letters from the Landlords to the Tenant dated April 29, 2008; May 13, 2008; and June 26, 2008.

I find that the Tenant is in breach of a material term of the Tenancy Agreement dated November 6, 2001, by allowing an occupant to live in the rental unit without the Landlords' written consent. I find that the Tenant is in breach of a material term of the Tenancy Agreement by failing to notify the Landlords promptly of any change in the number of tenants and occupants (paragraph 12.1 and 12.2). Furthermore, I find that the Tenant is in breach of a material term of the Tenancy Agreement dated November 6, 2001, by failing to disclose information required by the landlord to allow the landlord to determine the applicable Tenant Rent Contribution or for audit purposes (paragraph 11(c)).

I dismiss the Tenant's application to cancel the Notice to End Tenancy for Cause.

Conclusion

Under section 55 of the Act, and based on the above facts, the Landlord is entitled to an Order of Possession and I hereby issue the order, effective 1:00 p.m., February 28, 2009. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

January 27, 2009
