

DECISION AND REASONS

Dispute codes

CNR

Introduction

This hearing was convened in response to an application by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (Notice to End). In the hearing the landlord requested an Order of Possession if the landlord's Notice to End is upheld.

The tenant and the landlord appeared in the hearing and each participated in the hearing via submissions and testimony.

Issue(s) to be determined

Is the Notice to End tenancy valid?

Is the landlord entitled to an Order of Possession?

Background and evidence

This tenancy began on March 01, 2008. The tenant occupies a "subsidized rental unit" operated by the landlord: a housing entity that has an agreement regarding the operation of residential properties with the British Columbia Housing Management Commission or Canada Mortgage and Housing Corporation. The rental unit is exempted from the requirements of sections 34(2), 41, 42 and 43 of the Residential Tenancy Act (the Act). The tenancy agreement stipulates the rent payable to the landlord is \$1500. Subsidization of the unit means the tenant rent contribution is \$390.

On April 17, 2009 the landlord issued a letter to the tenant in respect to **Unreported Income**, stating that information to the landlord led them, "to the discovery that (the tenant) is working under the table at a local restaurant and not reporting the income to either the Ministry of Housing and Social Development nor Affordable Housing" (landlord), and that as a result of failing to submit this information the landlord determined to remove the tenant's subsidy effective April 30, 2009; and, further stating that on May 01, 2009 the tenant would be required to pay the full market rent of \$1500 as listed on the tenancy agreement. The landlord stated in the letter that on failure to

now pay \$1500 a 10 Day Notice to end tenancy would be issued. The tenant only paid the usual rent of \$390 and did not pay the \$1110 increase as requested. As promised, the landlord served the tenant with a 10 Day Notice for Unpaid Rent dated May 04, 2009, with an effective date of May 14, 2009. The tenant sought to cancel the Notice to End. As promised, the landlord now seeks an order of possession.

The tenancy agreement includes an *Addendum for Units Where the Rent is Related to the Tenant's Income*. The *addendum* begins by stating that the landlord and tenant acknowledge that the rent of (the tenant's rental unit) is related to the income of the tenant. The Tenant Rent Contribution (*addendum*) is determined by the landlord, whose requirement, (also stipulated in the *addendum*), is that the tenant agrees to complete and sign a declaration stating a number of particulars, including income and number of occupants, on a form provided by the landlord at least every 12 months and from time to time as requested by the landlord. However, in testimony the landlord stated that at no time since the onset of this issue between the parties has the landlord requested of the tenant to complete and sign a declaration on a form provided by the landlord to update any particulars. Regardless, the landlord decided they had sufficient, credible, and defensible evidence to determine the tenant immediately no longer qualified for subsidization of her rental unit, quadrupling the Tenant Rent Contribution, and effectively wiping out and removing the tenant's subsidy.

The landlord submits that their actions and conduct in this matter are proper and that they have followed the prescribed route and the provisions set out in legislation and afforded to landlords and tenants for matters such as this. Their position is that the tenant no longer qualifies for rent subsidy; their rent is now that which is stipulated on the tenancy agreement, they have not paid this amount, there is no compromise available, the tenant must vacate. In their submission and testimony the landlord has even brought into question the quality of the tenant's character.

I expressly declined to hear evidence as to the tenant's qualification for rent subsidy.

Analysis

I disagree with the landlord's position and choice of course in this matter.

Section 49.1 states as follows:

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

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"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.

(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.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(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.

Section 52 states as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

To summarize:

Section 49.1(2) of the Act clearly states that if the tenant ceases to qualify for the subsidized rental unit a landlord may end the tenancy of a subsidized unit by giving notice to end the tenancy.

Section 49.1(3) states the form to which such a notice under 49.1 must adhere.

Section 49.1(4) states that such a notice must also comply with section 52,

Section 52 states that in order to be effective a notice to end a tenancy must be in writing and must: **(e)** when given by a landlord, be in the approved form.

The Residential Tenancy Branch conveniently provides the approved form by way of form ***RTB-32 - 2 Month Notice to End Tenancy because the tenant does not qualify for subsidized rental unit.*** Reason: *The tenant no longer qualifies for the subsidized rental unit.*

Nowhere in the Residential Tenancy Act does it stipulate that in this type of matter a landlord may, instead, circumvent the statutory provisions and protective balances inherent in Section 49.1 by serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. I prefer the tenant representative's submission that doing so clearly violates, not only the spirit of the legislation, but the clear intentions of the legislature with respect to the rights of tenants of public housing bodies.

I find that instead of serving the tenant with this proper form and proper Notice to End, the landlord improperly served the tenant with a Notice to End for unpaid rent.

Conclusion

I order that the landlord's 10 Day Notice to End Tenancy for unpaid rent dated May 04, 2009 is invalid, cancelled and of no effect.

Effectively, the landlord's request for an Order of Possession is denied.

Dated June 12, 2009.