



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNQ and FF

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed testimony, to cross-examine the other party, and to make submissions during the hearing.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy because the Tenant Does Not Qualify for Subsidized Housing issued on September 16, 2009 be cancelled?

Is the tenant entitled to filing fee costs?

Background and Evidence

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy because the Tenant Does Not Qualify for Subsidized Housing was served to the Tenant on September 16, 2009 indicating that the tenant was required to move out of the rental unit by January 31, 2010.

The Landlord testified that they are a non-profit housing society that is linked to BC Housing. The society receives BC Housing funding for subsidies which are passed on to tenants who qualify. The Landlord testified that BC Housing mandates that each occupant provided space in a rental unit be present and live in the home a minimum of 40% of the time; a requirement that is included as a material term of the tenancy.

The landlord provided a copy of the tenancy agreement signed between the parties which includes clause 6, that outlines the requirement that the unit was allocated based upon the three occupants identified by the Tenant and that any change in this material

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term of the tenancy could result in a termination of the tenancy. The Landlord testified that they believe that since the start of the tenancy the tenant's second child has not lived in the rental unit at least 40% of the time.

The Landlord provided evidence of communication that occurred in 2007 when, after determining the tenant was over-housed, the tenant was offered a two bedroom unit in exchange for her three bedroom unit. The Tenant declined this offer. The Landlord stated that in September 2009 they reassessed tenants and found two families that were over-housed and issued each of them notices to end tenancy.

The Landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- that the tenant lives in a three bedroom, subsidized townhouse with only one child;
- that the Tenant had declared on her tenancy agreement that she and two children would live in the rental unit;
- that the Tenant has not had her daughter live in the rental unit;
- that evidence submitted by the Tenant indicates her daughter is currently not living with her and that there is no date upon which she will return to reside for at least 40% of the time.

The Tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- that her family circumstances require she have an extra bedroom for any visits home that her daughter makes;
- that she is being singled out for eviction; and,
- that she expects her daughter to occupy the rental unit on a 40% basis soon.

During the hearing the tenant testified that her daughter is not living at the rental unit and is present perhaps 25% of the time. The Tenant stated that she hopes to have her daughter live with her by the end of this year. The Tenant testified that this is a very difficult situation as her daughter wishes to be home more often but that the family has certain issues to sort out before this can be possible.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has provided sufficient evidence to show that the Tenant no longer qualifies for subsidized housing. The Tenant has testified that her daughter does not



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reside with her at least 40% of the time; which is a breach of a material term of this tenancy and the agreement the Landlord has with BC Housing. Therefore; the tenant no longer qualifies for a three bedroom rental unit and must vacate the unit by the effective date of the Notice; January 31, 2010.

During the hearing the Landlord did not request an Order of possession.

Conclusion

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy due to a failure to qualify for subsidy, I am dismissing the Tenant's application to set aside the Two Month Notice to End Tenancy because the Tenant Does Not Qualify for Subsidized Rental Unit issued on September 16, 2009.

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: November 17, 2009.

Dispute Resolution Officer