

Decision

Dispute Codes:

CNQ

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Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a *Two-Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* dated November 23, 2009 and effective January 31, 2009.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the *Two-Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* was warranted by proving:
 - That to be accepted for the tenancy, the tenant 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; and
 - That there was a specific term contained within the tenancy agreement which provides that the landlord may end the tenancy by giving notice to end the tenancy upon the tenant or other occupant, as applicable, ceasing to qualify for the rental unit, as required in section 49.1(2) ; and
 - That at the time the Notice was issued, the tenant no longer met the criteria required to qualify for the unit

The burden of proof is on the landlord/respondent to justify the reason for the Notice, and prove that the tenant no longer qualifies nor meets the prescribed criteria to occupy the unit and also that the tenancy agreement contains a specific term that notice can be given to terminate the tenancy when the tenant has ceased to qualify for the eligibility criteria..

Background and Evidence

The tenant testified that he has been granted shared custody of his child and that, although this custody has been confirmed, the child's other parent had refused to comply and denied the child access. However, according to the tenant, access has been recently restored and the parents are cooperating. The tenant's position was that he does meet the qualification required to reside in the rental unit and that the landlord is not correct in its interpretation of the policy or agreement as it applies to his situation.

The landlord disputed this and gave testimony that the tenant has occupied a subsidized unit based on having the child reside there 40% of the time as required under the agreement. The tenant's release of information waiver had permitted the landlord to obtain evidence to support this from the Ministry and the other parent. This data was in evidence. The landlord testified that the tenant's circumstances did not meet the eligibility criteria in the contract and policy.

However, the landlord did not submit a copy of the organization's policy and the criteria being applied to end the tenancy, nor did the landlord furnish a copy of the tenancy agreement.

The landlord testified that, in addition to the above, the tenant was not living up to other related commitments made when he had applied for residency and that a One-Month Notice to End Tenancy could have been issued based on the tenant's conduct and may still be issued.

Analysis

According to section 49.1 of the Act, 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**. (my emphasis)

The Act specifies that, unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is not earlier than 2 months after the date the notice is received, and is the day before the day in the month, or in the other period falls on is based, that rent is payable under the tenancy agreement. A notice under this section must comply with section 52. The Act further provides that 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.

I note that in this instance, the landlord is alleging that the tenant has ceased to qualify as the tenant no longer meets the necessary criteria to qualify to reside in the unit. At the same time, the tenant has made the claim that he does meet the criteria.

In this dispute, I find that we have two parties putting forth opposite verbal assertions and that these claims are being presented in the absence of the relevant documentation that should have been placed in evidence. In particular, the landlord has failed to submit proof of the eligibility criteria that must be met by the tenant. No tenancy agreement containing a term stating that the parties agreed that the tenancy was contingent-upon meeting specific criteria. The landlord was permitted to give verbal testimony regarding the precise terms contained in the policy but the documentation was not in evidence.

I must emphasize that the burden of proof is squarely on the landlord in this matter and it is important to note that in a dispute such as this, the two parties and the verbal testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the respondent, in this case the landlord, has the onus of proving, during these

proceedings, that ending the tenancy is justified under the Act or the terms of the agreement.

When the evidence consists of conflicting and disputed verbal testimony, and in the absence of documentary evidence, then the party who bears the burden of proof will not likely prevail.

Conclusion

Based on the evidence and testimony of the parties, I find that the landlord has not succeeded in meeting its burden of proof to support ending the tenancy under section 49.1 and I hereby order that the *Two-Month Notice to End Tenancy* dated November 23, 2009 is cancelled and of no force nor effect.

January 2010

Date of Decision

Dispute Resolution Officer