



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNQ, MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and to cancel a Notice to End Tenancy.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Housing and to a monetary order for an overpayment of rent, pursuant to Sections 49.1, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on March 1, 2005 as a month to month tenancy for a monthly market rent of \$1,300.00 per month due on the 1st of the month, a security deposit of \$450.00 was paid on January 17, 2005. The tenancy agreement contains an addendum that stipulates specific qualifications for the rental unit include eligibility for housing subsidy.

Both parties provided substantial documentary evidence regarding the processes of determining the tenant's eligibility for a housing subsidy, including correspondence between the parties beginning June 27, 2010 regarding this year's subsidy determination.

In the correspondence submitted by the landlord, the landlord advises the tenant as early as July 5, 2010 that failing to qualify for subsidized housing will result in termination of the tenancy.

Both parties provided a copy of a 2 Month Notice to end Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit issued on September 23, 2010 with an effective vacancy date of November 20, 2010.

The landlord's agent testified the Notice was served by posting it on the rental unit door at 10:40 a.m. The tenant confirmed receipt of the Notice.

The tenant testified that the landlord had charged her \$90 per month too much for rent for the period from December 1, 2009 to September 1, 2010 and then \$1,000.00 too much for the month of October 2010.

The tenant stated that in her application for housing subsidy for the period of December 1, 2009 to September 1, 2010 an additional amount was included in the calculation of her subsidy amount that she had not included which lowered her subsidy and required that she pay an additional \$90.00 per month.

The tenant also disputes that she is not receiving subsidy for the month of October, 2010 and testified that she should be paying what she had been for rent.

Analysis

As noted in the hearing, the *Act* provides no jurisdiction on the calculation or payment of housing subsidies that impact tenants in rental situations. It was noted in the hearing, however, that BC Housing does have an appeal process that the tenant has not accessed in relation to her claims regarding the calculation of her subsidy.

As a result, I decline jurisdiction on the monetary matters in the tenant's application.

Section 49.1 provides authority for a landlord to end the tenancy of a tenant who occupies a subsidized rental unit by providing notice to end the tenancy if the tenant no longer qualifies for the rental unit.

I accept that the landlord has determined the tenant no longer qualifies for subsidization and therefore no longer qualifies for the rental unit. I find the landlord has issued a notice to end the tenancy in accordance with both Section 49.1 and Section 52 of the *Act*.

I note the landlord did not request an order of possession during this hearing.

Conclusion

Based on the findings above, I find the 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit issued by the landlord on September 23, 2010 is of full force and effect and order the tenant to vacate the rental unit no later than 1:00 p.m. on November 30, 2010.

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 02, 2010.

Dispute Resolution Officer