



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPQ

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession because the tenant does not qualify for subsidized housing, and to recover the filing fee from the tenant for the cost of this application.

The parties both attended, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information and testimony provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession because the tenant does not qualify for subsidized housing?

Background and Evidence

This month-to-month tenancy began on June 1, 2010. Currently, rent in the amount of \$411.00 is payable in advance on the 1st day of each month. The landlord also collected a security deposit in the amount of \$360.50 on May 7, 2010.

The landlord testified that the rental amount was originally \$548.00 which was for a family of 4. The tenant moved in with his wife and 2 children. She stated that over the summer, the tenants separated and one child remained with the tenant and the other moved with the tenant's wife.

On September 1, 2010 the landlord's agent served the tenant with a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, a copy of which was provided in advance of the hearing. The notice is dated September 1, 2010 and contains an expected date of vacancy of October 31, 2010, and states that the only reason for issuing the notice is that the tenant no longer qualifies for the subsidized rental unit.

The landlord's agent also testified that on September 8, 2010 the tenant's wife approached her stating that she had moved out with her daughter, gave a forwarding address and asked for the security deposit. The landlord's agent responded that she would only be able to return half of the security deposit if the tenant got the other half from social assistance.

On September 13, 2010 the landlord reduced the rent to \$411.00 which was the rental amount for 2 people. However, the unit has 3 bedrooms, and the landlord provided a copy of a letter sent to the tenant stating that he no longer qualified for a 3 bedroom unit. A copy of the tenancy agreement was not provided, however when questioned about reducing the rent after the notice to end tenancy was issued, the landlord's agent testified that the family needed food. Further evidence before me is that the tenant receives his social assistance cheque on the 15th of each month.

The tenant testified that he and his wife separated in the summer, but his 2 children reside with him in the rental unit. He stated that his daughter had originally gone with her mother, but the shelter provided was not conducive to raising children and the daughter returned to reside with the tenant. Further, he testified that he told the landlord's agent almost 2 months ago that his daughter had returned.

The tenant further testified that the landlord's agent has not been around enough to know how many people reside in the unit, and provided a social assistance form with the names of the family members on it, and had a social worker highlight the names for which he receives income assistance. The 3 names were highlighted: the tenant, his son and his daughter.

Analysis

The landlord has failed to establish that the tenant does not qualify for subsidized housing for this unit. The testimony of the landlord is that on September 8, 2010, after the notice to end tenancy was issued, the tenant's wife told her that she had moved out with her daughter. The tenant's evidence is that he told the landlord's agent early to mid-October that his daughter had returned. The form from social assistance is not entirely clear, however I heard evidence of the parties that the names were highlighted at the social assistance office, the copy provided to the landlord showed the highlighting, and 3 people were listed in the family to qualify for shelter.

Conclusion

The landlord's application is hereby dismissed and the notice to end tenancy is hereby cancelled.

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: December 06, 2010.

Dispute Resolution Officer