



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPQ, FF

Introduction

This matter dealt with an application by the landlord to obtain an Order of Possession because the tenants no longer qualifies for subsidized housing, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the tenant on December 06, 2010.

Both parties appeared and the tenant was supported by an outreach worker. The Parties gave affirmed testimony, were provided the opportunity to present their evidence and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

Background and Evidence

Both Parties agree that this tenancy for this unit started in June 2010. The tenant had rented another unit in the complex prior to this since 2006 or 2007. The tenant pays a subsidized rent of \$213.00 per month which is due on the first day of each month. The tenant paid a security deposit of \$570.00.

The landlord testifies that the society has a policy in place that states in order to qualify for subsidized housing tenants children must live with the tenant. The landlord states it was discovered in September, 2010 that the tenant no longer had her children living with her. The landlord states that if there is a plan in place for the reunification of parents and children then they allow a tenant to remain at the rental unit. The landlord explains that the policy allows three months for a plan of this nature to be put in place and he has no knowledge that the tenant and her social workers have agreed a plan for her children to return home. The landlord states that he has spoken to the tenant about this and explained the ramifications if she was not reunited with her children.

The tenant testifies that she had spoken to the landlord about the implications of signing her children into temporary care and states he agreed that she could have three to six months to go to a treatment centre for addiction and then have the children returned to her. The tenant states the landlord has only given her three months before serving her with the Notice to End Tenancy.

The tenant states she is illiterate and found she did not understand her rights to dispute the Notice given to end her tenancy within 15 days. The tenant states she was expecting to be supported by her social worker for this hearing but her social worker could not attend and she then asked the outreach worker to support her instead. The tenant states she is hoping to get into a treatment centre shortly and seeks more time to find alternative accommodation.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 49.1 of the *Act* states: a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant ceases to qualify

for the rental unit. The landlord argues that the Policies of the Society state that in order to qualify for this subsidized unit the tenants' children must reside with her. In this case the children have not been residing with the tenant since September, 2010.

Consequently, the tenant no longer qualifies for the subsidized housing and the landlord is entitled to end the tenancy by giving the tenant a Two Month Notice.

When a landlord serves a tenant with a Two Month Notice to End Tenancy a tenant has 15 days from the date the notice is deemed served to apply for Dispute Resolution to dispute the Notice. Section 49.1 (6)(a) of the *Act* states: if a tenant who has received a notice under this section does not make an application for Dispute Resolution in accordance with subsection (5) (i.e. within 15 days), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and must vacate the rental unit by that date. The tenant did not make an application to dispute the Two Month Notice within the 15 days allowed under the *Act*, consequently the tenant is conclusively presumed to have accepted that the tenancy has ended.

As the Notice was served to the tenant on December 01, 2010 the effective date of the notice has been amended pursuant to section 53 of the *Act* to ensure the tenant was given two clear months notice. Therefore, the effective date of the Notice is amended to January 31, 2011 and an Order of Possession has been issued pursuant to section 55 of the *Act* for that date.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on January 31, 2011. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.



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I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$570.00 the balance plus any accrued interest must be returned to the tenant at the end of the tenancy or otherwise dealt with in accordance with section 38 of the *Act*.

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 31, 2010.

Residential Tenancy Branch