



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, CNR

Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy. Both parties participated in the conference call hearing.

Although the application identified a notice to end the tenancy for cause, it was clear at the hearing that the tenant was disputing a notice ending the tenancy because the tenant ceased to qualify for subsidized housing. I found it appropriate to amend the application to indicate that the tenant was disputing the notice she was served.

Issue to be Decided

Should the notices to end tenancy be set aside?

Background and Evidence

The parties agreed that on May 25, 2011 the tenant was served with a 2 month notice to end tenancy for ceasing to qualify for subsidized housing (the "2 Month Notice") and that on June 2 she was served with a 10 day notice to end tenancy for unpaid rent (the "10 Day Notice"). The parties further agreed that the landlord assumed responsibility for the rental unit early in 2011 and that the tenant had resided for a number of years in the unit while it was being managed by a different organization. The tenant has received a subsidy from BC Housing during her tenancy, for which she must reapply each year. The tenancy agreement provides that the market rent on the unit is \$1,047.00 per month.

Shortly after the landlord assumed responsibility for the rental unit, the tenant applied to reduce her subsidy from \$480.00 per month, which represents \$440.00 in rent, \$10.00 for parking and \$40.00 for utilities. The landlord assessed her application and denied it, keeping her rental rate the same.

The landlord sent the tenant a package of information which included her application for a subsidy renewal. The parties did not indicate the date on which this package was

sent, but I note that it was referred to in a letter dated March 4, 2011. The tenant did not submit the application or required information within the required timeframe and on March 18, 2011 the landlord sent a letter to the tenant advising that they had not received the application for rent subsidy or verification information and warned her that if she failed to submit those documents she may be served with a notice to end tenancy because she no longer qualified for subsidized housing and that she may be charged the maximum rent for the unit.

In a letter dated May 17, 2010, and I note that the year is incorrectly typed on the letter as the landlord did not have responsibility for the unit in the year 2010, the landlord advised that they still had not received the required information and requested that she do so no later than May 20, 2011. Again the letter warned that the tenancy could be ended or the market rent charged.

In a letter dated May 25, 2011 the landlord advised that the tenant had not complied with their requests and that her subsidy was withdrawn effective June 1, 2011. The letter advised that the market rent of \$1,047.00 would be payable for that month.

The parties agreed that by June 2 the tenant had submitted all the required information. The landlord testified that they were unable to obtain the subsidy for the month of June because the tenant's information had not been submitted in time.

The tenant paid no rent in the month of June and testified that she did not even attempt a partial rent payment because the previous landlord had refused partial rent payments. The tenant argued that the amount of her subsidy was incorrectly determined and that she could not afford to pay the market rent.

Analysis

The landlord operates the rental unit pursuant to an agreement with BC Housing. Section 2 of the Residential Tenancy Regulations provides that the landlord is therefore exempt from the provisions under the Act which prohibit rent increases. I find that the legislature specifically excluded such organizations from the limitations provided under the Act because there was an intention that the Residential Tenancy Branch not have jurisdiction over subsidies provided by BC Housing. I therefore find that I am not empowered to determine whether the amount of the tenant's subsidy was incorrectly calculated or whether it was rightly withdrawn.

It is clear that despite having been asked repeatedly to provide information to the landlord, the tenant failed to do so. The tenant claimed that in the past, she had engaged in an in person meeting with the landlord at which time the calculation was

made and that she did not understand how to go about the application process. I do not accept this. At the hearing the tenant showed herself to be conversant with the process of applying for the subsidy, she clearly understood that her application had to be made each year and she acknowledged that she had been making such applications for many years.

I find that the landlord had the right to demand the market rate as the tenant had failed to obtain a subsidy prior to the month of June. I find that the tenant paid no monies in rent for the month of June and I find that the landlord has grounds to end the tenancy on the basis that the tenant failed to pay rent. I therefore dismiss the tenant's application to set aside the 10 Day Notice. The tenancy will end pursuant to that notice.

It is unnecessary to address the 2 Month Notice.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed and the landlord is granted an order of possession.

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: June 28, 2011

Residential Tenancy Branch