



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNQ DRI

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 2 Month Notice to end tenancy because the Tenant does not qualify for subsidized rental unit, to cancel a 10 Day Notice to End Tenancy for unpaid rent, and to dispute an additional rent increase.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has a valid 2 Month Notice to End Tenancy been issued in accordance with section 49.1 of the *Residential Tenancy Act* (the Act)?
2. Has a valid 10 Day Notice to End Tenancy for unpaid rent been issued in accordance with section 46 of the *Residential Tenancy Act* (the Act)?
3. Has the Tenant re-qualified for the subsidized rental unit since receiving the 2 Month Notice?
4. Has the Tenant paid the March 2012 rent in full within five days of receiving the 10 Day Notice?
5. If not, has the Landlord appeared at the teleconference hearing and made an oral request for an Order of Possession?

Background and Evidence

The parties agreed they entered into a written month to month tenancy agreement for rent in a subsidized housing complex that began on October 1, 2007. Subsidized rent based on an annual income assessment is payable on the first of each month and the market value of rent as per the tenancy agreement is \$1,000.00 per month. On or before March 1, 2007 the Tenant paid \$452.50 as a security deposit that was based on market value rent.

The Landlord affirmed that on January 26, 2012 the Tenant was sent a letter requesting she complete the short term income review for rent subsidy and for her to provide the required documents to support her subsidy application.

The Landlord advised that based on the information they had acquired from the Tenant's bank she no longer qualified for the full subsidized rent. The Landlord stated the Tenant has not provided the required documents therefore her subsidy has been revoked and her rent reverted to the market value rent of \$1,147.00 per month.

The Landlord pointed out that the tenancy agreement at section 18(b)(ii) stipulates that if the Tenant is eligible to receive a rent subsidy the Tenant agrees to provide proof of income and assets along with the completed declaration every twelve month period and from time to time as required by the Landlord.

The Landlord stated that when the Tenant failed to qualify for the subsidy a 2 Month Notice to End Tenancy was posted to the Tenant's door on February 28, 2012. Then the Tenant failed to pay rent for March 1, 2012 so a 10 Day Notice to End Tenancy was posted to the Tenant's door on March 6, 2012.

The Tenant affirmed she received the 2 Month Notice February 29, 2012 and she received the 10 Day Notice on March 6, 2012. The Tenant confirmed that she has not paid anything towards March 1, 2012 rent and argued that she should not have to pay rent higher than her previous subsidized rent of \$351.00. She argued that the money the Landlord is calling income is a loan from her sister that she receives each month and should not be considered as income. When asked why she has not provided the required documents to the Landlord she stated she is waiting to get copies of her tax return from Revenue Canada.

The Landlord advised that they are bound by their tenancy agreement and in the absence of proof of income they cannot extend the Tenant's subsidy any further. The Landlord requested that I uphold the 10 Day Notice as no rent has been paid for March 2012 and requested an Order of Possession effective March 31, 2012.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the tenancy agreement, the Tenant's written

statement, copies of the 10 Day Notice and the 2 Month Notice, and copies of e-mails between the Tenant and Landlord.

The evidence supports the tenancy agreement provided the Tenant the opportunity for subsidized rent and in the event that the Tenant no longer qualified for the subsidy the rent amount would revert to market value rent. In this case the subsidy was revoked as the Tenant failed to provide the required proof of income in breach of section 18(b)(ii) of the tenancy agreement and the rent reverted to market value rent.

Part 1 Section 2(a) of the Regulation stipulates that rental units operated by the British Columbia Housing Management Commission are exempt from the requirements of sections 34(2), 41, 42, and 43 of the Act which pertain to assignment, subletting and rent increases.

This tenancy agreement is exempt from sections 41, 42, 43, of the Act, as stipulated in Part 1 Section 2 of the regulations, and therefore this is not an illegal rent increase, rather it is a reversion to market value rent as provided for in the tenancy agreement. Therefore, I dismiss the Tenant's claim to dispute an additional rent increase.

As per the aforementioned I find that the Tenant was required to pay market value rent for March 1, 2012. The evidence supports the Tenant has not paid anything towards March 2012 rent and has therefore breached section 26 of the Act which stipulates that a Tenant must pay rent when it is due in accordance with the tenancy agreement.

Upon review of the 10 Day Notice to End Tenancy, I find the Notice was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the 10 Day Notice. Accordingly I dismiss the Tenant's application to cancel the 10 Day Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

As the Landlord appeared at this hearing and requested an Order of Possession I hereby approve her request in accordance with section 55 of the Act, effective March 31, 2012.

As I have granted the Landlord an Order of Possession based on the 10 Day Notice there is no requirement to make findings or a decision relating to the Tenant's request to dispute the 2 Month Notice as this tenancy will end March 31, 2012 as per the Order of Possession granted above.

Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective March 31, 2012. This Order is legally binding and must be served upon the Tenant.

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: March 27, 2012.

Residential Tenancy Branch