

DECISION

Dispute Codes OPR

Introduction

This Review Hearing was convened in response to an application by the Landlord for an Order of Possession pursuant to section 55 of the *Residential Tenancy Act* (the “Act”).

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy began on February 27, 2011. The tenancy agreement sets out the market rent of \$495.00 however the Tenant qualified for a rental subsidy determined by the Landlord and provided by BC Housing. The Tenant has paid \$320.00 from the onset of the tenancy and the remainder of the rent has been subsidized. In a letter dated February 13, 2012, the Landlord informed the Tenant that because the Landlord determined that the Tenant had another person “A” residing in the unit, the Tenant no longer qualified for the subsidy and that the rent would revert back to the market rent as of March 1, 2012. This letter specifically sets out as follows:

Given the frequency of A’s observed attendance on site and your written response to refuse the request for confirmation that A has an alternate full time residence other than your apartment your eligibility to receive a rent subsidy is forfeited effective February 29, 2012. Should you wish to appeal this decision you should contact the BC Housing Rent Desk . . .

The Tenant paid \$320.00 for the rent in March 2012 and failed to pay any rent in April 2012 or thereafter. On April 19, 2012, the Landlord served the tenant with a 10 day

notice to end tenancy for unpaid rent (the "Notice"). The Tenant did not file an application to dispute the Notice.

The Tenant states that he did not file the application to dispute the Notice as he did not know this was required. The Tenant states that prior to the rental subsidy being discontinued the Tenant attempted to tell the Landlord that the person in this unit was only a guest and that the subsidy determination was made in error. The Tenant states that the Landlord refused to take this information and A's rental receipts from the Tenant until after the Tenant was successful in obtaining this review hearing. The Tenant states that upon calling BC Housing he was told that they had no information in relation to the subsidy being forfeited and to return to the Landlord to determine eligibility for the subsidy. The Tenant argues that the Notice is based on a rental amount without the subsidy and that this subsidy was taken away from in error. The Tenant argues that the Notice is unfair as he had no way to appeal the decision to remove his subsidy and therefore the rental arrears being claimed as unpaid by the Landlord. The Tenant states that on a limited income, the lack of the subsidy results in the Tenant not being able to rent the unit at the market rate. The Tenant has not moved out of the unit and has not paid any rent for May, June and July 2012.

The Landlord states that the only appeal process provided to a tenant who wishes to dispute a subsidy determination is through the complaint process to the Landlord. The Landlord states that BC Housing has delegated its authority to make subsidy determinations to the Landlord and that there is no other avenue to appeal nor does BC Housing provide any oversight on such determinations by the Landlord.

The Tenant states that there is no fair procedure to dispute the Landlord's decision and nothing is in writing to inform the Tenant of the appeal process. The Landlord states that the complaint process is provided to all tenants upon entering the tenancy and that the Tenant was informed that he could talk to the Executive Director but that this never occurred. The Tenant states that he was advised by a lawyer and BC Housing to seek clarification of his rights through the Residential Tenancy Branch.

The Landlord argues that the fairness of the determination of subsidy is not a part of the matter to be determined and that the only matter to be determined is the unpaid rent and that if the Tenant wishes to establish an entitlement to subsidy, it is incumbent on the Tenant to provide the required information. The Tenant states that the Tenant did offer proof to the Landlord that the decision regarding the loss of subsidy was made in error but that the Landlord refused to accept this information or to talk to the Tenant about this information. The Tenant states that he made attempts with his advocate to negotiate a settlement with the Landlord but the Landlord has also refused to negotiate a settlement. The Landlord clarified at this hearing, that no negotiations would be considered to settle the dispute.

Analysis

Section 44 of the Act provides that a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];

Section 46 of the Act provides that a landlord may end a tenancy for unpaid rent by providing a 10 day notice to end tenancy and that upon receipt of this notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of

the Notice. Section 49.1 of the Act provides that a landlord may end the tenancy of a subsidized unit if the tenant ceases to qualify for the rental unit by giving a two month notice.

Given the evidence of the Tenant in relation to his income, I find that the Tenant by virtue of losing the subsidy is placed into the situation where the tenant also no longer qualifies for the rental unit at market rate and that both of the above sections therefore apply to the Tenant's situation. Despite the Landlord indicating that the Tenant had opportunity to appeal the subsidy decision through the complaint process, I find the Tenant's evidence that the Landlord refused to consider the Tenant's argument of error to be persuasive and that the Tenant was not provided with an opportunity to make such an appeal of the decision. Given these factors, I find that although both of these notice provisions may be applied in this situation, the Landlord should have provided the Tenant with the two month notice to end tenancy under Section 49.1 as this notice allows the time necessary for issues of entitlement to a subsidy to be addressed or appealed by the Tenant. However, as the Tenant failed to pay any rent at all following the receipt of the 10 day notice, I find that the Tenant acted to remove the two month option from the Landlord. As the tenant failed to make an application for dispute resolution in relation to the 10 day notice, I find that the Notice is valid, that the Tenant is conclusively presumed to have accepted the tenancy, and that the Tenant must move out of the unit. I find therefore that the Landlord is entitled to an order of possession.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

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: July 19, 2012.

Residential Tenancy Branch