



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy that was given for non-payment of rent

Background and Evidence

This tenant lives in a subsidized rental unit of a public housing body and was paying subsidized rent, based on her income, a \$457.00 per month.

The tenant recently failed to qualify for the subsidized rent and therefore the landlord's raised her rent to, what they call, the low end market rent of \$815.00 per month.

The tenant has been unable to pay the \$815.00 per month, and therefore the landlords served her with a 10 day Notice to End Tenancy for non-payment of rent.

The landlord has argued that this is still subsidized rent, because they set the low-end market rent rate and approximately 90% of the appraised rental value.

Analysis

Is my finding that the \$815.00 the landlord has set as the rent for this unit is not subsidized rent, it may be at the low end of market value as stated on the landlords own documents, however it is still market rent.

It is also my finding that the reason the landlords are ending this tenancy is because they have made the decision that the tenant no longer qualifies to have her rent subsidized.

Therefore the landlords must follow the requirements of section 49.1 of the Residential Tenancy Act that state's:

(2) Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlords cannot get around the two months notice to end tenancy simply by raising the rent to the market value and then giving a 10 day Notice to End Tenancy when the tenant fails to pay it.

Conclusion

The 10 day notice dated July 4, 2012 is hereby cancelled and this tenancy continues.

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 30, 2012.

Residential Tenancy Branch