



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for time to cancel a Notice to End Tenancy, to cancel a Two Month Notice to End Tenancy and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The tenant has requested more time to cancel a Two Month Notice to End Tenancy. The Notice was served upon the tenant by leaving it in the tenant's mail slot on July 05, 2012. This Notice is therefore deemed to have been served on July 08, 2012 three days after it was posted. The Notice informs the tenant that the tenant has 15 Days to file an application to cancel the Notice. The tenant filed her application on July 23, 2012 which is the fifteenth day, therefore the tenant did file her application on time and this section of the tenants claim is not required.

Issue(s) to be Decided

Is the tenant entitled to cancel the Two Month Notice to End Tenancy?

Background and Evidence

Both parties agree that this month to month tenancy started on December 01, 1989. Rent for this unit has increased over the years of this tenancy to \$1,143.00.

The landlord's agent testifies that this unit is part of subsidized housing in this complex. The landlord's agent agrees that the tenants rent is not subsidized but is a capped rent and the rate is capped at the low end of the market value. The landlord's agent explains that the subsidy the landlord receives is a collective subsidy for all the units. The landlord's agent testifies that this is a two bedroom unit which the tenant originally shared with her daughter and the tenants rent was subsidized at that time, when the tenants daughter moved out 14 years ago the tenant did not provide details of her income so the tenants rent increased to the capped rate.

The landlord's agent testifies that the tenant has been over housed as she is a single tenant living in a two bedroom unit. Due to this the landlord's agent states the directive is that as the tenant is over housed the tenant no longer qualifies for this two bedroom unit.

The landlords agent testifies that the tenant was offered a one bedroom unit in one of the landlords other facilities for seniors but the tenant declined this offer. The landlord's agent testifies that the landlord has no other one bedroom units available in the complex in which the tenant lives. The landlord's agent has provided a copy of the tenancy agreement between the parties and directs the hearing participants to clause six of this agreement. Clause six relates to housing and states:

The tenant agrees to notify the Society of any changes in the number of residents occupying the premises. If an over housed/under housed situation occurs, the tenant agrees to accept the first available unit offered. Failure to comply shall be grounds for the termination of this tenancy agreement and/or loss of subsidy.

The landlords agent agrees that the landlord was aware for the last 14 years that the tenant was over housed but states due to the growing need for subsidized housing in the area for families the landlord has directed staff to enforce the directive to offer the tenant an alternative one bedroom unit and if the tenant declines this offer then to serve the tenant with a Two Month Notice to End Tenancy.

The landlord's agent testifies that as the tenant did decline the offer then the landlord's agent had no alternative but to serve the tenant with a Two Month Notice to End Tenancy on July 05, 2012. The reason given on this Notice is that the tenant no longer qualifies for the subsidized rental unit. This Notice has an effective date of December 31, 2012 and the landlord's agent states the landlord is willing to extend this date to March 31, 2013.

The tenant testifies that if she has been over housed for the last 14 years why, has the landlord not offered the tenant an alternative one bedroom unit sooner. The tenant testifies that as recently as last year a one bedroom unit became available in the same complex but this was rented to other people and the tenant did not know it was even vacant. The tenant testifies she would be happy to move to a one bedroom unit to reduce her rent and to be able to stay in the community she feels safe in with her neighbours who she has developed relationships with.

The tenant testifies that she did decline the landlords offer to move into the one bedroom unit in the seniors facility as the tenant used to live in that facility with her husband who was the manager of the complex. The tenant states she suffered abuse in the complex and it would be detrimental to her health if she had to move back to that complex. The tenant has provided a letter from her doctor who outlines that the tenant

suffered verbal and physical abuse when she lived in the seniors complex and the thought of moving back to that environment has caused the tenant great anxiety. The tenant testifies that she has been a tenant with this landlord for over 25 years and her medical condition is now significantly escalated due to the threat of eviction.

The tenant testifies that she feels discriminated against as she was not offered either one of the one bedroom units in her complex when they have become available even though the landlord has stated the tenant has been over housed for 14 years.

The landlord's agent testifies that she does not know why the tenant was not offered a one bedroom unit. The landlord's agent states they do not offer units to tenants generally, the units are advertised and then a tenant is selected as to the best fit for that particular unit. The tenant in this case was offered a unit in another complex that has more one bedroom units available. The tenant's present complex only has three one bedroom units which are all occupied. The landlord's agent states the landlord has fulfilled their obligation to the tenant in accordance with the tenancy agreement and the Residential Tenancy Act. The landlord is required to use the property to serve the community as a whole.

The landlord's agent addresses the tenant's arguments as to why the tenant has not been made an offer of a one bedroom suite during her 14 years of single occupancy and states she took over three years ago and found the previous management had neglected their responsibility to look at the tenants housing situation. The landlord's agent testifies that she choose not to engage the tenant at that time as she had more serious issues to deal with first.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to section 49.1(1) and 49.1(2) of the Residential Tenancy Act which states:

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(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.

The landlords agent argues that the tenant no longer qualifies for the rental unit as the tenant is over housed being a single person living in a two bedroom unit. The tenant argues that she has lived in the unit for 14 years and has never been offered a one bedroom unit until recently and the unit offered was not suitable due to past association with that complex.

I have also pursued the tenancy agreement clause six which relates to housing and does state that the landlord will only make one offer to a tenant if an over housing situation occurs and if the tenant does not accept that offer it is grounds for termination of the tenancy agreement.

In light of the evidence provided it is my decision that the tenant is over housed and although the tenant has not actually committed any breach of the Act the fact remains that the landlord must comply with their own directives in offering subsidized housing to the community. The tenant declined the offer of a one bedroom unit in the senior's complex for reasons that are understandable but are none the less not covered under any provision of the Residential Tenancy Act. I find therefore that the tenant no longer qualifies for this rental unit.

I do find however, that the landlords have allowed this situation to continue for a significant period of time which has allowed the tenant to integrate into the community in which she now lives and I find the landlords have been negligent over the period of 14 years in not offering the tenant a one bedroom unit when one become available sooner. However, as there is no provision under the Act for me to allow the tenant to continue residing in her unit, when the tenant no longer qualifies for this unit, I must deny the tenants application to cancel the Two Month Notice.

As the landlord has orally requested an Order of Possession at the hearing pursuant to section 55 (1) of the Act, I find the landlord is entitled to an Order of Possession with an effective date of March 31, 2013.

Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on March 31, 2012. This order must be served on the Respondent and may be filed in the Supreme Court 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: August 17, 2012.

Residential Tenancy Branch