

DECISION

Dispute Codes

Landlord: OPQ
Tenant: CNQ

Introduction

This matter was originally set for hearing on January 30, 2013 but was adjourned to the present session as it had been joined in error with two other applications.

This hearing addresses applications by both the landlord and the tenant.

By application of January 21, 2013, the landlord sought an Order of Possession pursuant to a two-month Notice to End Tenancy served by posting on the tenant's door on December 21, 2013. Notice was given on the grounds that the tenant no longer qualified for subsidized rent.

By prior application of January 4, 2012, the tenant sought to have the Notice to End Tenancy set aside.

As a matter of note, the tenant submitted a package of over 100 pages of evidence received at our Burnaby Branch on Friday, February 22, 2013 for the hearing on Tuesday, February 26, 2012.

Clause 3.5 under the Rules of Procedure requires that evidence must be submitted to the branch at least five clear business days before the hearing; weekends, the day received and the day of the hearing not counted.

For that reason, and considering that the tenant's application was made on January 4, 2013, with the initial session of the hearing having occurred on January 30, 2013 which provided ample time for him to submit evidence, I cannot accept such a large submission which I received on the day of the present hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy of January 21, 2013 be set aside or upheld and supported with an Order of Possession?

Background and Evidence

The landlord in this matter is a non-profit housing society operating the rental building with 93 units, 56 of which are geared to income under agreement with BC Housing. This tenancy began on July, 1 2005. Rent is \$238 of the \$1,305 market rent set at the beginning of the tenancy and the landlord holds a security deposit of \$333.

During the hearing, the office support manager stated that the housing society had, in late 2010 and early 2011 reviewed its rent subsidy procedures to realign to more precisely with those of the BC Housing Management Corporation and trained all property managers in conducting asset and income reviews.

The office support manager stated letters were sent to all subsidized tenants on July 6, 2012 advising of the current requirements and requested proof of income and asset statements from the 56 subsidized units in the rental building by August 31, 2012 for calculating the new subsidies to take effect on November 1, 2012.

Eleven of those were subject to review, and complied with requests for further documentation except two, including the respondent in the present matter. As a result the landlord issued the two-month Notice to End Tenancy on December 21, 2012 on the grounds that the tenant no longer qualified for the rent subsidy by failure to produce required documents. Furthermore, the landlord submitted documents that indicated the tenant's claims and assets had been misrepresented. In the result, the tenant had been receiving a larger subsidy than warranted.

In particular, the property manager stated that the letter of July 6, 2012 had directed that tenants include with their submissions pay stubs to verify employment income.

At his request, the subject tenant met with the executive director on or about September 19, 2012 and she reviewed the new requirements with him in detail in the meeting, subsequently acknowledged in an email from the tenant.

The office support manager stated that the tenant's file had been flagged for review as his 2011 Income Tax Package indicated employment income not previously submitted, his assets been listed in a letter from his financial planner but had not been supported by a full statement, his business licence address was the address of the financial planner, bank accounts had unexplained deposits, there was an undisclosed bank account, and his assets were somewhat higher than the norm for a low income tenant.

Based on the materials submitted by the August 31, 2012 deadline, the tenant's share of rent had been assessed at \$238 and by letter of November 2, 2012, the tenant was advised that his application for subsidy was to be subject to an income review. The letter requested additional verification including direction to the tenant to sign a release for bank account information and submit it to his bank, provide official statements of investments, verification of the tenant's right to use his financial planner's address as his business address and a rental agreement for that use.

The letter set a deadline of 30 days from receipt. By reply of November 26, 2012, the tenant referred to a previous Human Rights dispute with the landlord and requested that the audit be conducted by BC Housing rather than the landlord.

The landlord wrote to the tenant again on December 4, 2012 again requesting the documents and cautioned that failure to provide them by December 14, 2012 would constitute non-compliance and would render him ineligible to occupy a subsidized unit which would result in a two-month Notice to End Tenancy. The tenant replied on December 5, 2012 stating that he had not received an answer on his request to have BC Housing conduct the audit and stated he would instigate legal action if he did not receive an answer by December 12, 2012.

The executive director replied – stating that the landlord could request the BC Housing audit but stated that the request for materials, the deadline and consequences for non-compliance remained in place. When the requested materials were not received, the property manager wrote to the tenant December 21, 2012 with an explanation and served the Notice to End Tenancy.

The office support manager stated that the tenant had not submitted the pay stubs until after he had been served with the Notice to End Tenancy and that they reflected that his income had been higher than he had previously reported and that his rent subsidy had consequently been higher than warranted.

The property manager had also requested statements from the tenant's financial advisor, but had only been provided with a letter from his assistant listing the holdings. However, the office support manager stated that a full statement was required to indicate contributions and withdrawals from the accounts to fully verify the tenant's qualification for subsidy.

The office support manager stated that the tenant had claimed that his investment company did not provide quarterly statements, but she had telephoned the office to learn that they indeed were provided. The tenant did not submit the full quarterly statements until a few days before the first session of this hearing, over six months after the initial request.

The property manager said that the tenant's income tax statement had also erred in subtracting a self-employed business loss of her employment income with the result that his income net income was less than actual and the rent subsidy were consequently higher.

The tenant and his advocate stated that they were not fully aware of what documentation was needed and that the tenant had attempted to meet the landlord's requirements to which the executive director referred to the letter of July 6, 2012 and meeting of September 19, 2012 as being patently clear and unambiguous.

The tenant stated that his submission had been further delayed because the landlord had not replied directly to his request for a BC Housing audit instead.

Analysis

Section 49(2) of the Act provides that:

"...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."

I find that despite the landlord's several attempts to accommodate and remind him, the tenant failed to prove his eligibility for rent subsidy within and well beyond the set timelines and as required under the rental agreement.

While the tenant's advocate relied heavily on arguments as to the necessity of some items required for the income and asset review, I find that it is not within my purview to question the criteria used by the landlord or BC Housing.

Tenants are subject to the privilege of a rent subsidy based on a written agreement to provide materials necessary for the landlord to be satisfied that an assessment of income and assets is accurate.

In the present matter, I find that the tenant did not provide those materials in timely manner which jeopardized the landlord's ability to ensure the rental unit continued to be available as a "rent geared to income" unit, as required by BC Housing.,

Therefore, I find that the landlord is entitled to an Order of Possession as requested, to take effect at 1 p.m. on March 31, 2013.

Conclusion

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

The Notice to End Tenancy of December 21, 2012 is upheld and landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on March 31, 2013.

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: February 26, 2013