



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy - Section 46; and
2. A Monetary Order for compensation – Section 67.

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

Preliminary Matter

On February 27, 2013 the Hearing was conducted for 61 minutes after which the matter was not concluded. The Hearing was adjourned to reconvene on April 2, 2013. On this date, the Parties confirmed that the Landlord has not served the Tenant with a one month notice to end tenancy.

Issue(s) to be Decided

Is the 10 day Notice to end tenancy for unpaid rent (the “Notice”) valid?

Is the Tenant entitled to a cancelation of the Notice?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on February 1, 2004. The tenancy agreement provides that in order to qualify for the unit, the tenant must have dependent children. The tenancy agreement also provides for subsidized rent that is determined under CMHC operating

policy. In December 2012, despite being qualified to receive social assistance the Tenant stopped taking social assistance and in January 2013, the Tenant was provided a subsidy based on her remaining monthly income.

The Landlord states that in February 2012 the Tenant was informed that in order to further qualify for a rental subsidy the Tenant must obtain social assistance as the Tenant is qualified to receive these funds. The Landlord states that this is a requirement for the subsidy under their operating agreement with CMHC. The Landlord states that as the Tenant refused to obtain social assistance and refused to sign the financial declaration, the Tenant was determined to have lost her subsidy. The Landlord states that the tenancy agreement provides that where a tenant ceases to qualify for a rental subsidy the rental rate reverts to the market rate. The Landlord states that the Tenant's rental rate reverted to market rate as of February 1, 2013, that the Tenant failed to pay this rent and that on February 4, 2013 the Landlord served the Tenant with the Notice.

The Landlord argues that the reversion to market rent is the equivalent of a rental increase that is exempt from the Act through the provisions of the Regulation. The Landlord argues that the Landlord can therefore raise the Tenant's rent without notice or cap and that upon failure to pay the Landlord is entitled to serve the Tenant with the Notice. The Landlord argues that a two month notice to end tenancy of this unit only operates where a tenant ceases to qualify for the rental unit itself and not the subsidy. It is noted that paragraph 9 of the tenancy agreement provides that a failure to provide income verification for the unit is a breach of the agreement that will result in the loss of the subsidy for the unit and that the breach will also provide grounds to end the tenancy of the unit by the Landlord.

The Tenant states that the Landlord incorrectly refused to provide the Tenant with a subsidy by insisting that the Tenant be on social assistance in order to qualify for a rental subsidy. The Tenant argues that the Landlord is required in any event to provide a two month notice as the Tenant lost her subsidy for the unit. The Tenant states that

the Landlord also incorrectly calculated the amount of subsidy provided to the Tenant for the previous year and the Tenant claims reimbursement of the overpaid rental amount. The Landlord states that if the Tenant has a dispute in relation to the determination of the subsidy, the Tenant may take the dispute to the Landlord's Board of Directors.

Analysis

Section 2 of the Residential Tenancy Regulation (the "Regulation") provides that rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [*assignment and subletting, rent increases*] if the rent of the units is related to the tenant's income:

(g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:

(iii) the Canada Mortgage and Housing Corporation.

Under this Regulation, the Landlord is not required to give a notice of rent increase. Whether or not a reversion to market rent is the equivalent of a rent increase, this Regulation does not exempt the Landlord from the notice requirements of the Act in relation to ending the tenancy of a subsidized rental unit.

Section 49.1 of the Act provides that a landlord may end the tenancy of a subsidized rental unit by giving two month notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

While the Landlord argues that upon loss of the subsidy the Tenant has not ceased to qualify for the unit itself only the subsidy, it is clear from paragraph 9 of the tenancy agreement that where a tenant fails to provide income verification in order to qualify for a subsidy, this is also considered a breach and cause to end the tenancy. I find that this paragraph of the tenancy agreement effectively makes the qualification for a subsidy a qualifier for the unit itself, beyond the requirement of being a family with dependants.

As a result and without making any findings in relation to the qualification requirements for the subsidy itself, I find that the Tenant was determined by the Landlord to no longer qualify for the unit as a “subsidized rental unit”, the tenancy of which may only be ended with a two month notice. I find therefore that the Notice is invalid as being the wrong notice to end tenancy and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

As there is nothing in the Act that provides any authority in relation to the determination of rental subsidies, and noting that the Tenant has another process through which to dispute the way in which her subsidy is determined, I dismiss the Tenant’s claim for an overpayment of rent and the loss of the subsidy itself.

Conclusion

The Notice is cancelled and the 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: April 8, 2013

Residential Tenancy Branch

