



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENF Housing Society a.k.a. Entre Nous Femmes Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, OPQ, MNR

Introduction

This hearing was scheduled to deal with applications from both the tenant and the landlord. The tenant applied to cancel a notice to end tenancy. The landlord applied for an order of possession and a monetary order for unpaid rent.

Both the tenant and a representative of the landlord attended the teleconference hearing and gave affirmed evidence.

History of Proceedings

The landlord previously applied for an order of possession by Direct Request (RTB file EEEEE), pursuant to Section 55(4). The application was based on the landlord's evidence that the tenant had failed to pay outstanding rent. A decision and order of possession were issued by the Arbitrator on February 25, 2014.

The tenant sought a review of the February 25, 2014 decision and a review hearing was scheduled for May 6, 2014. The three applications heard May 13, 2014 were also originally scheduled for May 6, 2014, but were then rescheduled to May 13, 2014.

The tenant gave evidence that she phoned the RTB at the end of April, and was told the May 6, 2014 hearing had been rescheduled to May 13, 2014. Accordingly, the tenant did not call in to the May 6, 2014 review hearing. The tenant's view is that the RTB staff confused the date of the review hearing for File DDDDDD with the date of the hearing for the other three Files (AAAAAA, BBBB, CCCCC).

Since the tenant did not attend the review hearing on May 6, 2014, the reviewing Arbitrator dismissed the tenant's application on May 6, 2014 and confirmed the original decision and order of possession.

I advised the parties that the decision in Review File DDDDDD is final and binding and I am unable to change it. For that reason, I am unable to deal with either the tenant's application to cancel a notice to end tenancy or the landlord's application for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The landlord is a housing society. The landlord claims the tenant failed to pay rent of \$716.00 that was due for each of the months of March 2014 and April 2014 and rent of \$1,441.00 that was due for the month of May 2014. The landlord claims unpaid rent in the total amount of \$2,873.00.

The tenant agrees she did not pay any rent for the months of March, April, and May 2014. The tenant also agrees that \$716.00 in rent was due in each of the months of March and April 2014. However, the tenant says that her portion of May 2014 rent should be \$271.00 and the balance of her rent would be covered by BC Housing.

The tenant also says that she overpaid rent for the months of December 2013, January and February 2014. The tenant got a job starting in November 2013 and the landlord told her that her rent would be based on a percentage of her income starting the following month, in December 2013. The tenant's position is that three months' notice is required for a rent increase, and so she should not have had to pay the \$716.00 (a percentage of her employment income) until March 2014. The tenant's position is that she should only have been required to pay \$167.00 in rent for the months of December 2013, January and February 2014.

The landlord provided no documentary evidence in support of the landlord's application for a monetary order for unpaid rent. However, I was able to obtain a copy of the tenancy agreement that was submitted for previous file 818084.

The tenancy agreement was signed by the parties on November 28, 2011. The tenant paid a security deposit of \$657.00. Some relevant portions of the tenancy agreement read as follows:

1. Rent – the rent for the rental unit is \$1436.00 per month (the "Full Rent Amount")
2. Tenant Rent Contribution

The tenant will pay (check only the one that applies)

☐ the Full Rent Amount; or

☒ a tenant rent contribution based on ____% of gross household income (rent-geared-to-income); or

☒ a tenant rent contribution equal to the maximum shelter component provided by BC Benefits

...

9. Eligibility for Rent Supplement (Subsidy)

(a) The landlord and the tenant acknowledge that if the tenant pays rent based on the tenant's income, the difference between the Tenant Rent Contribution and the Full Rent Amount will be covered by a rent supplement or subsidy.

(b) For the purpose of setting the amount of the Tenant Rent Contribution and the amount of the rent supplement or subsidy, if any, the tenant agrees to declare, annually at a time the landlord determines, the income and assets of all residents in the rental unit who are 19 years or older, and to provide proof of such income and assets in a form that the landlord requires. The landlord may require a reassessment of the Tenant Rent Contribution at any time if the number of residents in the rental unit who are 19 years or older changes.

(c) The requirement to declare and document income is a fundamental and material part of this tenancy agreement. If the tenant:

(i) fails to provide the above-mentioned declaration and proof of income;

(ii) misrepresents or conceals any information requested by the landlord; or

(iii) becomes ineligible for the rent supplement or subsidy for any reason;

the tenant will immediately be required to pay the Full Rent Amount for the rental unit and the landlord may end the tenancy.

The landlord gave evidence that all tenants receive a rent subsidy and that all tenants are asked to confirm their income in May every year. The landlord's evidence is that the tenant in this application was given a written notice in May and did not provide the requested information. The landlord's position is that the tenant is therefore responsible for the full rent amount of \$1,441.00 for the month of May 2014 (the landlord states the full rent amount has increased since the tenancy agreement was signed). The landlord did not provide a copy of the written notice it says was given to the tenant or indicate the deadline for returning the information.

The tenant states that she has never received an annual review during her tenancy because she has been on social assistance. She states she received an “annual review” document on February 10, 2014 and says she signed and dated it and returned the form with income verification to the landlord. She states she gave the information to a different representative of the landlord than the one present at the hearing.

The parties agree that the tenant subsequently lost her employment.

Analysis

I note that in Section 2 of the tenancy agreement, two boxes are checked (despite the form instructions to check only one box). I take this to mean that the tenant might, at some points in her tenancy, be responsible to pay a tenant rent contribution based on an unspecified percentage of her income and, at other times in her tenancy, be responsible for a tenant rent contribution equal to the maximum shelter component provided by BC Benefits (social assistance).

I understand that the tenant was on social assistance prior to starting a job in November 2013. I find it was appropriate for the landlord to demand rent based on a percentage of the tenant's employment income effective the following month, December 2013. The tenancy agreement indicates two possibilities for the amount of the tenant rent contribution, one based on social assistance and the other based on income. I find the rent increase notice provisions set out in Section 42(2) do not apply when a tenant changes status from the tenant rent contribution based on social assistance to the tenant rent contribution based on employment income. In addition, Residential Tenancy Regulation 2 exempts housing societies which have an agreement with BC Housing from the requirements of Section 42. For those reasons, I find the tenant did not overpay rent for the months of December 2013, January and February 2014.

I do not have evidence regarding the tenant's income from employment or regarding the percentage of her income that she is obligated to pay when employed. However, I accept the evidence of both parties that \$716.00 was the correct amount of rent payable for March and April 2014.

I find that the landlord has not proven that the tenant failed to hand in the declaration and proof of income required by Section 9 of the tenancy agreement. The landlord did not provide documentary evidence that the tenant was asked to provide such information. Also, the landlord stated the information was requested in May of each year, and the hearing took place on May 13, 2014. It seems possible that the tenant had not missed the 2014 deadline for providing such information, at the time of the

hearing. For those reasons, I find that the requirement in Section 9(c) of the tenancy agreement is not triggered and the tenant is not required to pay the full rent amount for the month of May 2014.

Based on the evidence provided by the parties, I am unable to determine the correct amount of rent that was due from the tenant for the month of May 2014. Clearly some rent is payable since the tenant resided in the rental unit for that month. I accept the evidence of the parties that the tenant is no longer employed and I assume she is again on social assistance. I accept the tenant's evidence that she was responsible for the amount of \$167.00 rent per month when she was previously on social assistance. I find that \$167.00 is the amount of rent payable by the tenant for the month of May 2014.

In summary, I find the tenant is responsible to pay \$716.00 for each of the months of March and April 2014 and \$167.00 for the month of May 2014. The landlord is entitled to unpaid rent in the amount of \$1,599.00. I grant the landlord a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$1,599.00.

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: June 12, 2014

Residential Tenancy Branch