



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CBA Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This is an application to cancel a section 49 Notice to End Tenancy.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold the section 49 Notice to End Tenancy.

Background and Evidence

- On December 22, 2014 the landlord personally served the tenant with a two-month Notice to End Tenancy giving the following reason:
 - the tenant no longer qualifies for the subsidized rental unit.

The landlord testified that:

- The reason this notice was given is because in the addendum to the tenancy agreement it states:
 - unless BCHMC agrees in writing, the landlord has the right to end the tenancy agreement:
 - if the tenant is absent from the premises more than 90 days per year.

- if the tenant is absent from the premises for more than five days and without written notification to the landlord.
- In this case they found out that the tenant's mother, who is also the subsidized occupant of the rental unit, was absent from the rental unit for more than five days, without notifying the landlord.
- The reason they have the five-day rule is so they can keep track of how many days the tenants are absent from the premises per year, to ensure they do not exceed the 90 day limit.
- Since no one inform them of the absence, as required in the addendum, the board has chosen to end this tenancy and therefore the Notice to End Tenancy was given.

The tenants advocate argued that:

- The addendum states that if the tenant is absent from the premises for more than five days without written notification to the landlord they may be evicted, however it was the tenant's mother who was absent from the rental unit, not the tenant.
- The tenant herself was never absent from the unit.
- Further the tenant's mother was not absent for 90 days and they have been willing to supply proof to the landlords that she was only away from October 15, 2014 to December 28, 2014 however the landlords have not accepted that evidence.
- They are asking this Notice to End Tenancy be canceled because the addendum is ambiguous and they did not understand the tenant also included the tenant's mother.

Analysis

It is my finding, after reading the addendum to the tenancy agreement that the clause is somewhat ambiguous as it does refer to the tenant, and not any other occupants.

I find it reasonable that the tenant's misunderstood the clause the way it is written, and I accept their explanation that they believed it referred to the actual tenant who had signed the tenancy agreement.

I therefore will allow the request to cancel this Notice to End Tenancy and I have advised the landlords that it would be in their best interest to amend their addendum to ensure that it is clear that the clause refers to tenants and other subsidized occupants.

Conclusion

The two-month Notice to End Tenancy dated August 22, 2014 is hereby canceled 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: January 21, 2015

Residential Tenancy Branch

