



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a *2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit*. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The five month fixed term tenancy commenced October 15, 2014 and the fixed term is set to expire March 31, 2015. The tenancy agreement does not indicate what happens upon the expiry of the fixed term. The landlord is a public housing body and the rent payable by the tenant is geared to income. The rent is payable on the 1st day of every month and the tenant is currently required to pay \$198.00 based upon her income.

On January 29, 2015 the landlord's agent signed a *2 Month Notice to End Tenancy Because the Tenant does Not Qualify for Subsidized Rental Unit* with a stated effective date of March 31, 2015 (the Notice). The Notice was posted on the tenant's door on January 30, 2015 and the tenant filed to dispute the Notice within the time limit for doing so.

During the hearing, section 49.1 of the Act, which provides for ending a tenancy where a tenant no longer qualifies for a subsidized rental unit was reviewed and discussed. The landlord indicated that he did not issue the Notice because the tenant no longer qualifies for subsidized housing but as a means to communicate that the landlord would be treating the tenancy at an end on March 31, 2015 based upon the fixed term tenancy

agreement and because the landlord wanted to avoid giving the tenant a 1 Month Notice to End Tenancy for Cause. After explaining that my decision to uphold or cancel the 2 Month Notice would be based upon the interpretation and application of section 49.1 of the Act and that ending the tenancy based upon the expiry of a fixed term would have to be dealt with in a different manner, procedurally, the landlord indicated that he did not wish to proceed further.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The Notice before me is issued pursuant to section 49.1 of the Act. Section 49.1 provides, in part:

Landlord's notice: tenant ceases to qualify for rental unit

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.

[my emphasis added]

I have considered the above sub-sections together in interpreting the Act to mean that if a tenant no longer meets one of the criteria that was considered in determining eligibility for the subsidized rental unit then the tenancy may be ended by the landlord under this section of the Act.

In this case, the landlord did not demonstrate that the tenant no longer met one of the criteria that gave her eligibility for the rental unit. Therefore, I cancel the 2 Month Notice that is before me and the tenancy continues at this time.

I have not considered the landlord's position that the tenancy is about to end based upon the expiry of the fixed term as it was procedurally unfair to do so. The tenant was put on notice by way of the Notice to End Tenancy that the reason she was being evicted due to ineligibility for a subsidized unit and that is the reason the status of her eligibility is this proceeding. Procedurally, where a landlord who seeks to regain possession of a rental unit because the fixed term has expired, or is about to expire, and the tenancy agreement requires the tenant to vacate the rental unit, the landlord would make an Application for Dispute Resolution to request an Order of Possession on that basis.

Conclusion

The 2 Month Notice to End Tenancy has been cancelled and the tenancy continues at this time.

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: March 04, 2015

Residential Tenancy Branch

