



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HFBC Housing Foundation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling a 2 Month Notice To End Tenancy Because The Tenant Does Not Qualify For A Subsidized Rental Unit ("Notice").

The listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord submitted that they had not received all of the tenant's documentary evidence. I later determined that the letter from the tenant's ex-spouse, the evidence not received, was not necessary in consideration of this Decision and I therefore did not deem it necessary to adjourn the hearing or exclude the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

Background and Evidence

The undisputed evidence shows that this tenancy began on January 1, 2010, and that the monthly, economic rent is \$1450.00; however, the tenant pays rent that is geared to her income as she receives a government subsidy for the balance of the rent.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant the Notice. The Notice was dated March 4, 2015, was delivered to the tenant on that date, listing an effective end of tenancy on June 30, 2015, according to the landlord's agent (hereafter "landlord"). The Notice was issued pursuant to section 49.1 of the Act as the landlord has claimed that the tenant no longer qualifies for subsidized housing.

The tenant agreed that she received the Notice on March 4, 2015, and it is noted that her application in dispute of the Notice was filed on March 10, 2015, within the 15 days after service allowed by the Act to dispute the Notice.

In support of the Notice, the landlord submitted that they are a charitable operation and are required to follow the rules for public, subsidized housing as set out by BC Housing. In order to qualify for subsidized housing, the landlord is obligated to perform an annual evaluation of each tenant as to whether or not there are any changes income and living situations, the landlord submitted.

The tenant was given a 2 bedroom, subsidized rental unit based on her assertion that the occupants of the home would be her and her minor child, as reflected in the written tenancy agreement signed by the tenant on November 26, 2009, according to the landlord. Into evidence, the landlord submitted a copy of the written tenancy agreement.

When applying for the annual rent subsidy for the subsidized housing in 2015, the tenant again listed in her application that she and her minor daughter lived in the rental unit, according to the copy of the application submitted into evidence by the landlord.

The landlord submitted further that the on-site staff sometime in February 2015, alerted management to the fact that they rarely see the tenant's daughter on the premises, and in part of performing their annual review for 2015, the landlord became aware of an order from Supreme Court of British Columbia, dated September 10, 2009, which granted the tenant's ex-spouse sole custody of the minor child of the couple. Into evidence, the landlord submitted a copy of the Supreme Court order, which was confirmed sent to the landlord by the tenant's advocate on February 25, 2015.

The landlord submitted further that in order to qualify for a 2 bedroom subsidized rental unit, a child has to reside with the parent at least 40% of the year, and in this case, the tenant's child only resides with the tenant a total of 89 days, according to the visitation schedule outlined in the Supreme Court order.

The landlord submitted further that due to the tenant being a single person, without primary custody of her child, she is over housed according to BC Housing standards and rules as she has 2 bedrooms based upon having custody of her minor child.

In response, the tenant and her advocate submitted that the tenant was in the process of preparing an application with the Supreme Court to increase her time with her daughter, and that the proposed eviction would adversely affect the chances of the tenant to gain more visitation. The tenant submitted a copy of the letter from the tenant's legal counsel, but it is noted that the legal counsel could not provide a time frame for the application to the Supreme Court.

The tenant's advocate pointed out that the tenant has been living in the rental unit for 5 years, all based upon the same information and needs the extra room for her daughter when she is visiting.

Analysis

Under 49.1(1) of the Act, the section of the Act in which the landlord's Notice was issued, a public housing body is a prescribed person or organization and the subsidized rental unit is operated by the public housing body or on behalf of that body, and is occupied by a tenant who has met the eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement. Subsection (2) stipulates 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.

After reviewing the evidence, I find the landlord submitted sufficient evidence to support their Notice. In reaching this conclusion, I find that when the tenant first signed the written tenancy agreement on November 26, 2009, the information contained in her tenancy agreement was not correct as the tenant did not have custody of her daughter at that time and still does not. I also find that the written tenancy agreement allows a landlord to end the tenancy if the tenant ceases to qualify for the subsidized rental unit.

Although the tenant's advocate argued that the information at the inception of the tenancy is still the same, the circumstances have changed for the landlord as they have just been made aware this year that the tenant does not have her daughter the minimally required 40% of the year. According to the Supreme Court order, the tenant has access to the child every Saturday from 10:00 a.m. to 7:00 p.m. Sunday, from December 25 until January 2 in even numbered years, from the day school lets out to December 25 on odd numbered years, during the Spring break every year, and during odd numbered years the month of July. When calculating these days, even if the Spring break is 2 weeks, I agree with the landlord's figures as to the total number of days the tenant has custody of the child, if averaged on a 2 year basis.

I am not willing to hold the landlord responsible for the tenant's inaccurate information provided in her written tenancy agreement, and now that they are made aware of the tenant's custodial situation, I find that they were within their rights to enforce the guidelines as set out by BC Housing.

Due to the above, I therefore dismiss the tenant's application seeking to cancellation of the Notice, without leave to reapply.

I have not granted the landlord an order of possession for the rental unit as they did not make such a request at the hearing as allowed under section 55(1) of the Act. The tenant is, however, advised that the tenancy ends on the effective date of the Notice, or June 30, 2015.

Conclusion

The tenant's application is dismissed.

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 20, 2015

Residential Tenancy Branch

