



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on June 17, 2015 seeking to cancel a 2 Month Notice to end tenancy issued because the Tenant does not qualify for subsidized rental unit.

The hearing was conducted via teleconference and was attended by the Tenant who gave affirmed testimony that she personally served the Landlord with copies of her application for Dispute Resolution and Notice of hearing documents on June 24, 2015.

Based on the submissions of the Tenant I find the Landlord was sufficiently served Notice of this proceeding, in accordance with section 89 of the *Act*. Accordingly, I proceeded with the scheduled hearing in absence of the Landlord.

Issue(s) to be Decided

1. Should the 2 Month Notice to end tenancy issued June 11, 2015 be upheld or cancelled?

Background and Evidence

The Tenant testified that she entered into a written month to month tenancy that began on April 1, 2015. Rent is payable on the first of each month and the market rent was listed as being \$1,200.00. The Tenant currently pays a subsidized rent amount of \$561.00. In mid-March 2015 the Tenant paid \$600.00 as the security deposit based on the market value rent.

The Tenant submitted evidence which included copies of: the 2 Month Notice dated June 11, 2015; an "Interviewers Guide" relating to her application for tenancy; the Landlord's letter dated April 30, 2015; and a Provincial Court Notice of Hearing document.

The Tenant testified that she was disputing the eviction Notice as she currently has 50% custody of her children even though the paperwork does not specifically say that. She

noted that she usually has her children more than 50% of the time and they even stayed with her for the entire period of July 4 – 27, 2015.

The Tenant stated that the custody issues for her children are currently being heard in Provincial Court. She asserted that these family matters take several months and she does not anticipate receiving a decision until sometime in November or December.

The Tenant stated that she has continued to pay her rent on time since receiving the 2 Month Notice in June 2015. She has been keeping her Landlord informed and last week she provided them with another court document as evidence that the matter is still ongoing.

No evidence was submitted on behalf of the Landlord or their reasons for issuing the 2 Month Notice, as no one attended the scheduled hearing on behalf of the Landlord.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 49.1 (2) of the *Act* provides that 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 careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Where a Notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. When that Notice relates to a tenant not qualifying for a subsidy the Landlord bears the burden to prove their reasons why the subsidy was refused or rescinded.

In this case no evidence was submitted on behalf of the Landlord to support issuance of a 2 Month Notice or the reasons the Landlord wished to end this tenancy, as there was no one in attendance on behalf of the Landlord.

Therefore, I concluded there was insufficient evidence to prove the merits of the 2 Month Notice. Accordingly, I granted the Tenant's application and cancelled the 2 Month Notice to end tenancy issued June 11, 2015.

Conclusion

The Tenant was successful with her application and the 2 Month Notice issued June 11, 2015 has been cancelled and is of no force or effect.

This tenancy remains in full force and effect until such time as it is ended in accordance with the *Act*.

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: August 20, 2015

Residential Tenancy Branch

