



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COQUITLAM KINSMEN HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ, CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The society landlord was represented by the individual landlord (the landlord). The landlord confirmed he had authority to act on behalf of the society landlord.

The landlords did not raise any issue with service of the tenant's dispute resolution package. The tenant confirmed receipt of the landlords' evidence.

Preliminary Issue – Scope of Application

The tenant initially checked the box indicating that she wished to cancel a 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit pursuant to section 49.1. The tenant later scratched out this box and initialled it; however, the tenant in the "details of dispute box" indicated that her notice related to the discontinuation of her subsidy.

At the hearing, the tenant indicated that she wished to cancel both the 10 Day Notice and the 2 Month Notice; however, the tenant did not bring a copy of the 2 Month Notice with her when she attended at the Residential Tenancy Branch to file her application. The tenant thought that this meant that she could not file to cancel the 2 Month Notice. This is not correct. For the purposes of the tenant's application, I find that, by setting out the details of dispute as she has, the tenant has sufficiently pleaded that she seeks to cancel the 2 Month Notice and will consider this as part of her application.

At the hearing the landlord indicated that he had filed a cross application. The landlord told me that his application was included in his evidence. I asked the landlord if he paid a fee: the landlord indicated he had not paid a fee.

Subsection 59(2) of the Act sets out that a dispute resolution must:

- (a) be in the applicable approved form,
- (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
- (c) be accompanied by the fee prescribed in the regulations.

As the landlords have not paid the fee, there is no application by the landlords before me and I will not consider the landlords' application. I informed the landlords of this decision at the hearing. The landlord made an oral request for an order of possession.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an order of possession? Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began on 1 July 1999. This is a rent geared to income tenancy. The tenancy agreement set out that monthly economic rent is \$1,030.00. The society landlord continues to hold the tenant's security and key deposits totaling \$250.00. I was not provided with a copy of the tenancy agreement.

On or about 7 May 2015, the landlord and tenant entered into an agreement for repayment of \$198.00 of rent arrears. The tenant agreed to pay an extra \$50.00 per month until the rent arrears was repaid.

On or about 18 June 2015, the landlords personally served the 2 Month Notice to the tenant. The 2 Month Notice set out that the tenant failed to qualify for a subsidy.

On or about 25 June 2015, the landlord sent another request for the documents.

On or about 10 July 2015, the landlord served the tenant with the 10 Day Notice by posting that notice to the tenant's door. The 10 Day Notice was dated 10 July 2015. The 10 Day Notice set out that the tenant had failed to pay \$1,238.00 of rent that was due on 1 July 2015. The rent arrears included economic rent of \$1,040.00 for July and \$198.00 in rent arrears. The 10 Day Notice set out an effective date of 31 July 2015.

The landlord provided me with a rent ledger:

Item	Amount
February Rent	\$366.00
February Payment	-200.00
March Rent	366.00
March Payment	-200.00
April Rent	366.00
March Payment	-500.00
May Rent	366.00
May Payment	-366.00
June Rent	366.00
June Payment	-366.00
July Rent	1,040.00
August Rent	1,040.00
September Rent	1,040.00
Total Monetary Order Sought	\$3,318.00

The landlord testified that he has not received any payments since June 2015. The parties agree that the tenant has not provided the documents requested.

The landlord testified that, despite repeated requests, the tenant had not provided her most recent notice of assessment (NOA) from the Canada Revenue Agency (CRA) as well as three months of bank statements. The landlord testified that the tenant had also failed to provide proof of fulltime studies for her adult son as well as her adult son's NOA from CRA. The landlord testified that these documents were required so that he could fill out the subsidy form for BC Housing. The landlord testified that these documents are necessary for him to adequately certify that the tenant is entitled to the subsidy to BC Housing. The landlord testified that unless the tenant's adult child is enrolled in fulltime studies he is considered a separate economic unit and his income must be accounted for in the application.

The tenant testified that in the past her property manager accepted paystubs as sufficient for the subsidy application to BC Housing. The tenant provided me with a written statement from the former property manager that sets out the same. The tenant testified that her son is not currently attending school, but will be in February at which time she will provide the documents. The tenant submits that it is unfair to require last year's notice of assessment as that year includes an RRSP withdrawal which she submits artificially inflated her income for the purposes of the notice of assessment. The tenant testified that she is reluctant to provide her banking information as she has had problems with her bank security in the past.

Analysis

Section 49.1 allows a landlord to end a tenancy with two months' notice where the tenant fails to qualify for a subsidy:

- (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.

The landlord has provided sworn testimony that he requires certain documents in order to process the tenant's application for a subsidy to BC Housing. The tenant has confirmed that she has not provided the requested documents, but says that she should not have to provide the documents.

It is not within the jurisdiction of this Branch to review the subsidy requirements: A subsidy is a benefit provided to a party and is not an entitlement under the Act. The landlord testified to repeated attempts to obtain the required information and provided documentary evidence that corroborates the demand. The tenant has refused to comply with these requests.

On this basis, I find that the 2 Month Notice was validly issued and dismiss the tenant's application to cancel that notice. As the 2 Month Notice is valid, the landlords were entitled to possession of the rental unit on 31 August 2015. As this has not happened the landlords are entitled to an order of possession effective two days after service on the tenant.

Further, even if the tenant was entitled to the subsidy, the tenant has failed to pay at least \$564.00 in rent for March and July.

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have not been provided with any evidence that would entitle the tenant to deduct any amount from rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant did not pay any amounts to the landlords after receiving the 10 Day Notice. The tenant was not entitled to deduct any amount from rent. As there was outstanding rent at the time the 10 Day Notice was issued of at least \$564.00, I find that the 10 Day Notice is valid. As the 10 Day Notice is valid, the landlords were entitled possession of the rental unit on 31 July 2015. As this has not happened the landlords are entitled to an order of possession effective two days after service on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords are provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: September 18, 2015

Residential Tenancy Branch

