



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNQ, CNL

Introduction

The tenant applied to cancel a two month Notice to end tenancy because the tenant does not qualify for the subsidized rent unit, issued on July 6, 2015. The tenant also indicated a Notice was issued ending the tenancy for landlord's use; that reason is combined on the single Notice issued to the tenant.

Both parties were present at the hearing. The landlord confirmed receipt of the hearing documents in July 2015.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

It was confirmed that only one Notice ending tenancy has been issued, relating to loss of a rent subsidy.

The tenant said that she had submitted copies of all asset declarations completed annually and supplied to the landlord. These documents were not before me; the landlord did not receive that evidence. The landlord said that the Notice ending tenancy and removal of the rent subsidy related only to the use of bedrooms, not a failure to disclose assets, income or due to damage caused to the rental unit.

In the absence of copies of the declaration documents the tenant was at liberty to make oral submissions.

Issue(s) to be Decided

Should the two month Notice ending tenancy because the tenant does not qualify for subsidized rent issued on July 6, 2015 be cancelled?

Background and Evidence

This tenancy commenced on August 1, 1997. A copy of the signed tenancy agreement was supplied as evidence. Subsidized rent is due on the first day of each month.

The tenant has two children living with her in a two bedroom unit; currently 11 and 12 years of age.

The original landlord was replaced by the current landlord in 2007.

The tenant confirmed receipt of the two month Notice ending tenancy because the tenant does not qualify for a subsidized rental unit issued on July 6, 2015. The Notice has an effective date of September 30, 2015.

The single reason on the Notice is:

"The tenant no longer qualifies for the subsidized rental unit"

Clause A.7 of schedule A of tenancy agreement provides:

The landlord chose the tenant based on the information that shows that the tenant qualifies for rent subsidy. The landlord has the right to terminate the agreement:

if the tenant does not qualify for rent subsidy OR

if there is a change in the family size that means the family is over-housed or under-housed as shown in the National Occupancy Standards under the National Housing Act."

Clause A.7 of the tenancy agreement provides the five *National Occupancy Standards*, which include:

- a parent will not share a bedroom with a child; and
- those dependents of opposite sex aged five and over do not share a room.

Schedule A of the tenancy agreement provides the operating agreement that exists between the landlord and the British Columbia Housing Management Commission. That agreement includes rules about the use of the property that are contained in the Schedule. Any rent subsidy may be increased or decreased if there are changes to the tenants' household income and assets. The Schedule indicates that the tenant was chosen due to the family size, income and assets. Any change in family size is important and the landlord has the right to terminate the tenancy if the family size changes.

The landlord said that they completed an inspection of the rental unit in August 2014 and discovered the tenant had erected a make-shift wall in one of the two bedrooms. The female child was using the far side of the room and the male child was using the entry portion of the room. Both children are over the age of five years. The tenant was not using the master bedroom; it was full of boxes; she was sleeping in the living area.

The landlord said they have repeatedly told the tenant that she is under-housed and that she must vacate the rental unit. The landlord does not believe the tenant qualifies to remain in the current unit as a result of the children, now 11 and 12 years of age, sharing a single room. When the tenant did not vacate at the end of the last school year, as the landlord understood the tenant would do, they decided to issue the Notice ending tenancy. The landlord

emphasized that she is personally very opposed to the opposite sex children sharing a room. The landlord stated the tenant was expected to follow this standard when she signed the tenancy agreement at least 17 years ago.

The landlord submitted evidence including an August 21, 2015 letter issued in response to the tenants' July 13, 2015 application disputing the Notice. The letter confirms that this has been a long-term tenancy and that at the time the agreement was signed the tenant had one child who is now an adult living elsewhere. In 2007 when the current society assumed responsibility for the rental unit they were not aware that the tenant was occupying the rental unit and not complying with the occupancy standards. The letter indicates the landlord has repeatedly tried to work with the tenant and explains the requirements of the occupancy standards related to opposite sex children sharing a bedroom. They have encouraged the tenant to locate alternate accommodation that is suitable for her family. The landlord is willing to assist the tenant in working with BC Housing to locate housing.

The landlord said that they have recently been contacted by BC Housing who requested a reference for the tenant. The landlord provided a positive reference.

The tenant said that the landlord has been aware of the fact that the children lived in the rental unit. During each year of her 17 year tenancy the tenant has completed declarations that showed the number, age and sex of people living in the two bedroom unit; the landlord had always known how many people lived in the home and it was never an issue. The landlord knew for years that three children were living in the home; the landlord would complete inspections each year and never said anything to the tenant until August 2014. At one time the children shared the bedroom and a curtain was used to separate the space between the children.

Several months prior to August 2014 the tenant erected a wall in the bedroom. The tenant viewed the room as providing separate space for her female and male children. The tenant confirmed that when the landlord was in the unit in August 2014 they told her the children each required their own room and suggested she place one of the children in the master bedroom. The tenant said she was not repeatedly told she must move her children but did confirm she has been seeking out a new rental. The tenant said that locating a three bedroom unit on the amount of subsidy she can receive does not seem very likely.

The tenant said that it was not until she received the landlords' evidence for this hearing which included the August 21, 2015 letter that she realized the landlord wanted the wall removed.

The tenant has since removed the wall from the bedroom. The tenant is sleeping in the living area and the children now have use of the two separate bedrooms.

The landlord stated they were not aware the tenant had removed the wall and that it was not the installation of the wall that they wished to focus on as a reason for ending the tenancy. The landlord said they are not comfortable with the tenant sleeping in the living room and believe that may also constitute cause to end the tenancy.

The tenants' advocate stated that the tenant has not had repeated conversations with the landlord and was never given any written warning that her tenancy could end. In August 2014 the tenant was told the use of the bedrooms was a problem. The tenant did not receive any written notice until she saw the landlords' evidence submission for this hearing. The tenant had

not seen this as an urgent matter, given the landlord had always known the number of people living in the unit.

The tenant said she is looking for another home but that she was never told she must obtain greater accommodation.

Analysis

This tenant is bound by a tenancy agreement that includes terms related to the rent subsidy provided by the BC Housing Commission. Schedule A of the tenancy agreement provides the parties with terms that can impact on-going rent subsidy and the right of the landlord to end the tenancy should income, assets or family composition change.

The landlord, who has managed the tenancy since 2007 seeks to end the tenancy of the subsidized rental unit based on the tenants' failure to meet the *National Occupancy Standards* contained in Schedule A of the tenancy agreement. The breach of the tenancy agreement is based on the sharing of a bedroom by two opposite sex children over the age of five years.

The 1 month Notice to end tenancy was issued based on termination of the rent subsidy.

Section 49(1) of the Act provides, in part:

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.

(Emphasis added)

I find from the evidence before me that at the time the tenancy commenced in 1997 the tenant met the eligibility criteria for the subsidized rental unit; otherwise the tenant would not have been accepted by the landlord.

The landlord has the burden of proving the reason given on the Notice to end tenancy. Ending a tenancy is a serious matter as little is more significant in a persons' life than shelter. In order to make a fair determination I must carefully scrutinize the landlords' submissions in support of ending the tenancy.

There was no evidence before me that the tenant has ever failed to provide the landlord with the annual asset and income declarations, which include information on the family composition. Therefore, I find that the landlord has been continually aware of the family composition, particularly the presence of the two children who were born 11 and 12 years ago.

There was no evidence before me that the landlord issued any warning that prior to August 2014 the tenant was not complying with the *National Occupancy Standards*.

The landlord testified that in August 2014 they became aware of the wall erected in the one bedroom which the opposite sex children over the age of five years were sharing. It was this discovery that led the landlord to inform the tenant this arrangement was not acceptable. From the evidence before me there was some sort of discussion in August 2014 between the landlord and tenant; however the details of that discussion were not recorded. No written instructions were issued to the tenant setting out steps she must take or informing the tenant that her tenancy was at risk.

There was no evidence before me of any communication directing the tenant to remove the wall she had installed, direction to the tenant that she was in breach of the tenancy agreement or any warning that her rent subsidy could be terminated. During the hearing the tenant expressed an understanding that the landlord had wanted her to vacate the rental unit. However, I find no evidence that the tenant was properly informed of the breach of the tenancy agreement and that the tenant could be evicted based on the shared bedroom.

Once the tenant saw the landlord's evidence for this hearing she took steps to remove the wall and placed the children in separate bedrooms. Based on what the tenant explained was the motivation for her to remove the wall, I find that it was the result of the August 21, 2015 letter the landlord issued in response to the tenants' application, supplied as evidence, that led the tenant to understand what was required of her.

I have considered the fact that the landlord knew the children had been sharing the bedroom for the past year, the absence of any written notice issued to the tenant and the absence of any evidence of reliance on the terms of the tenancy agreement during that time. I have also considered the landlord's failure to supply detailed information outlining the repeated conversations she said she had with the tenant, which the tenant denied.

Written direction given by the landlord would have allowed the tenant to revert the use of the bedrooms to the state the landlord must have believed existed since the children had turned five years of age. I can only assume the landlord understood the children, once they turned five years of age, would have used separate bedrooms, with the mother sleeping in the living area. I do not know how long the children had shared the bedroom, but it is reasonable to find that the landlord would have believed the children were each using separate bedrooms once they had turned five years of age; otherwise the landlord would have proceeded with enforcement of the terms of the tenancy agreement long before July 2015.

The landlord has been aware of the family composition for years and has not taken steps to end the tenancy based on the number of family members and bedrooms in the rental unit. As a result of that failure to strictly adhere to the terms of the tenancy agreement I find it was not reasonable to expect the tenant to understand that having two children in the same bedroom would result in termination of the rent subsidy. Further, the landlord was aware of this situation for almost one

year before taking any steps, such as a written warning, which would have allowed the tenant an opportunity to respond.

Therefore, I find, pursuant to section 62(3) of the Act, that the landlord has failed to prove that the tenant no longer qualifies for the rent subsidy and that the Notice ending tenancy issued on July 6, 2015 is cancelled.

The tenant is now cautioned and informed that the landlord wishes to strictly rely on the terms set out in the tenancy agreement.

Conclusion

The Notice ending tenancy issued on July 6, 2015 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

This decision is final and binding and 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: September 18, 2015

Residential Tenancy Branch

