



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Greater Victoria Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ, CNC, MNDC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy issued because the tenant does not qualify for subsidized housing; for an order cancelling a notice to end the tenancy for cause; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord society attended the hearing and each gave affirmed testimony.

An observer also attended with the landlord, who did not testify or take part in the proceedings, with the consent of the tenant. The landlord's agent questioned why the observer would not be permitted to take part and remain in attendance at the hearing, and I explained that it is my policy to ensure that there are not multiple agents of a landlord all acting as agents of the landlord in a hearing against a single tenant. The observer could remain in attendance and not take part, or could give independent testimony. The landlord's agent chose to have the observer remain in attendance and not take part in the proceedings.

The parties were given the opportunity to discuss settlement, and an opportunity to question each other with respect to the evidence and testimony provided.

During the course of the hearing, the landlord's agent consented to cancelling the 1 Month Notice to End Tenancy for Cause.

Further, during the course of the hearing the tenant withdrew the application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on October 1, 2005 and the tenant still resides in the rental unit. Subsidized rent in the amount of \$422.00 per month is payable on the 1st day of each month and there are no rental arrears. The rental unit is one of 53 apartment townhouses within a complex.

The landlord's agent further testified that eligibility under BC Housing requires that a minimum of 2 people including 1 dependant may occupy a 2 bedroom rental unit. This particular unit has 2 bedrooms, and the tenant resides there with his son. The landlord has a policy that once a dependant child of a tenant reaches the age of 21, the tenant is no longer eligible for a 2 bedroom unit within the complex. The tenant's son turned 21 in June, 2015. A BC Housing information document has been provided which states that families are defined as a minimum of 2 people including one dependent child. Another BC Housing information document has been provided which defines a dependent child as under age 19, or under age 25 if in school full-time, or because of physical or mental infirmity is accepted as a child for income tax purposes. This rental unit allows until age 21, which is different from BC Housing

The landlord society completes annual subsidy reviews which involve the tenant completing a form and returning it back to the landlord society, and the landlord society applies for the subsidy on behalf of the tenants. The form is reviewed and rent is calculated. Upon reviewing this year's review, which is dated August 14, 2015, a household composition was also reviewed and the landlord noticed that the tenant's son is now age 21.

In order to get a transfer to a smaller unit, the tenant is to apply to BC Housing and when a unit becomes available by any housing provider, the tenant would be contacted either by BC Housing or the housing provider. A Registry exists for those with operating agreements with BC Housing, and BC Housing takes care of the subsidy. Tenants can be re-housed if there's something available. If a tenant no longer qualifies for the program, they move on. In this case, the landlord believes the tenant qualifies for individual housing, and the landlord's agent sent a Transfer Request from to the tenant

with a Notice to End Tenancy and a letter as a courtesy. The letter explains that the tenant should fill out the form and send it in, but the landlord did not hear back from the tenant.

The landlord spoke to the tenant previously about places he was looking at without his son, and the tenant was interested in a building that was available, but the landlord's agent told the tenant she wasn't sure that unit was suitable. The landlord then had a short-notice vacancy by another tenant, and the landlord's agent thought it might be a win-win. The landlord's agent sent a letter to the tenant's lawyer but never heard back from the tenant or the lawyer.

On September 23, 2015 the landlord served the tenant personally with a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the notice), a copy of which has been provided. The notice is dated September 23, 2015 and contains an effective date of vacancy of November 30, 2015. The reason for issuing it is: "The tenant no longer qualifies for the subsidized rental unit."

The landlord's agent orally requested an Order of Possession, and would be content with an effective date of December 15, 2015.

The tenant testified that on October 25, 2015 the person observing this hearing stopped the tenant on the sidewalk in front of the building and said that if the tenant agreed to a transfer, that when a 1 bedroom unit became available, the observer would give the tenant a reference and shook the tenant's hand. A unit became available in the building but the tenant has heard absolutely nothing. The tenant spoke to someone at BC Housing and was told there were no units available, but the tenant was lead to believe that he could move when a place became available. The landlord has several buildings within the City.

The tenant's son is not infirm, but has a significant speech impediment. He has finished his course, has a job lined up commencing in January, 2016 and has to have a home somewhere when he starts his new job. Rent for December, 2015 has already been paid and the tenant has filled out all of the forms for BC Housing. Until another unit is available, the tenant and his son will be homeless and the tenant seeks to stay in the rental unit until January.

BC Housing advised the tenant that it would be 3 or 4 months before another unit becomes available.

Analysis

Where a tenant disputes a notice to end the tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

The *Residential Tenancy Act* states:

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.

(Underlining Added) I accept the testimony of the landlord's agent that the tenant no longer qualifies for a 2 bedroom unit, however I have read the tenancy agreement, and there is no mention of ending the tenancy for that purpose. The only mention of an age in the tenancy agreement is that the income and assets of anyone age 19 years or older is considered in the calculation of the subsidy. It also states that the tenant agrees to observe the rules and regulations delivered with the tenancy agreement, but a copy of the rules have not been provided for this hearing.

In the circumstances, I am not satisfied that the notice was issued in accordance with the *Residential Tenancy Act*, and therefore, I hereby cancel it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated September 24, 2015 is hereby cancelled, by consent.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn.

I hereby cancel the 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated September 23, 2015, and the tenancy continues.

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: November 27, 2015

Residential Tenancy Branch

