



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Klahanee Park Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPQ, MNR
MT, CNQ

Introduction

This hearing concerns 2 applications:

- i) by the landlord for an order of possession as the tenant does not qualify for subsidized housing / and a monetary order as compensation for unpaid rent or utilities; and
- ii) by the tenant for more time to make an application to cancel a notice to end tenancy / and cancellation of a notice to end tenancy.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Tenancy began in what is subsidized housing in February 2003. Monthly rent is due and payable in advance on the first day of each month. The economic rent for the unit is \$832.00. The tenant's portion of monthly rent is \$177.00, and a security deposit of \$413.50 was collected near the start of tenancy.

Pursuant to letters to the tenant from the landlord by date of June 20, July 11, and July 23, 2015, the tenant was informed that she had provided insufficient evidence in support of an entitlement to subsidized housing for the period beginning August 01, 2015.

Thereafter, pursuant to section 49.1 of the Act which **addresses Landlord's notice: tenant ceases to qualify for rental unit**, the landlord issued a 2 month notice to end

tenancy dated August 06, 2015. The notice was accompanied by a letter from the landlord by that same date. The landlord testified that the notice was served by posting to the unit door and by way of registered mail. The date shown on the notice by when the tenant must vacate the unit is October 31, 2015. The reason identified on the notice in support of its issuance is as follows:

The tenant no longer qualifies for the subsidized rental unit.

The tenant claims she did not receive the notice which was posted to her door.

As to the notice sent by registered mail, the landlord provided the Canada Post tracking number, and the Canada Post website informs that the notice was accepted at the Post Office on August 11, 2015. Further, the Canada Post website informs that after attempted delivery, a notice card was left at the tenant's address on August 12, 2015, informing her of the item and where it could be picked up. The tenant also claims that she did not receive the Canada Post notice card and, subsequently, the 2 month notice was returned to the landlord on September 01, 2015.

The tenant filed an application to dispute the notice on November 10, 2015, and has also applied for more time to make an application to cancel a notice to end tenancy. In her application she has undertaken to explain why her application to dispute the notice was filed late. Specifically, she claims she became aware of the notice to end tenancy when she received a letter from the landlord dated October 27, 2015, in which the landlord informed her of a move-out inspection scheduled for October 31, 2015. Then, in response to the tenant's request, the landlord scanned a copy of the notice and emailed it to the tenant on November 03, 2015. The tenant claims she printed the notice on November 04, 2015, before filing her application on November 10, 2015.

As the landlord concluded that the tenant would be vacating the unit on October 31, 2015, the landlord discontinued withdrawal of monthly rent of \$177.00 from the tenant's bank account after October 31, 2015. However, as the tenant continues still to reside in the unit, the landlord now seeks the following compensation for the tenant's portion of unpaid rent for 3 months in the total amount of \$531.00:

\$177.00: tenant's portion of rent for November 2015

\$177.00: tenant's portion of rent for December 2015

\$177.00: tenant's portion of rent for January 2016

Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 2 month notice to end tenancy dated August 06, 2015. While the tenant claims she did not receive the notice posted to her door, or the notice served by registered mail, I find that the notice was served by way of registered mail in compliance with section 88 of the Act, which speaks to **How to give or serve documents generally**.

Section 90 of the Act which addresses **When documents are considered to have been received**, provides in part:

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed;

Following from the above, I find that the notice sent by registered mail on August 11, 2015, is deemed to have been received 5 days later on August 16, 2015.

Sections 49.1(5) & (6) provide as follows:

49.1(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

As the tenant's application to dispute the notice was filed on November 10, 2015, I find that it was filed outside of the statutory 15 day period available. In the result, the tenant has applied for more time to make an application to dispute a notice to end tenancy. Section 66 of the Act addresses **Director's orders: changing time limits**, in part:

66(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

I find that as the tenant's application filed on November 10, 2015 was filed "beyond the effective date on the notice" which was October 31, 2015, pursuant to section 66(3) of the Act I am precluded from extending the time limit. Accordingly, the tenant's application for more time is dismissed, and I find that the landlord has established entitlement to an **order of possession**. Pursuant to the landlord's request during the hearing, the order of possession is to be effective **January 31, 2016**.

The tenant does not dispute the landlord's claim for compensation of **\$531.00**, and I find that the landlord has established entitlement to a **monetary order** in that amount.

As the end of tenancy nears, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

The tenant's application is hereby dismissed.

I hereby issue an **order of possession** in favour of the landlord effective not later than **January 31, 2016**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$531.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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: January 11, 2016

Residential Tenancy Branch

