



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FF

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;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The parties admitted service of all documents.

The tenant attended the hearing. The landlord was represented at the hearing by its agents. Both parties 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.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the witnesses, 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 1 October 2012. The parties entered into a written tenancy agreement. The tenancy agreement provides for rent to be set based on the tenant's income. The rental unit contains three bedrooms. The agent DK testified that the society has an agreement regarding the operation of the residential property with the British Columbia Housing Management Commission.

The tenant resides in the rental unit with her two children. The tenant's daughter is over nineteen.

The tenant's rent is determined as 30% of her family income to a maximum market amount. The market rate for the various units in the residential property is determined annually. The current market rate for the rental unit is \$1,990.00.

The landlord society conducts rent subsidy reviews. The tenant's adult child was found to have unreported income. This unreported income was included in determining the tenant's subsidy entitlement. The result of the unreported income was to eliminate the tenant's subsidy entitlement.

The tenant testifies that the unreported income was from loans the tenant's daughter received from a friend. The agent DK testified that, in accordance with the landlord's policies, only documented loans from a financial institution are excluded from income for the purposes of determining rental subsidies. The agent DK testified that the letter provided is not sufficient to exclude the loans from the rent calculation.

On 13 October 2015 the landlord sent a letter to the tenant informing her that the new monthly rent was \$1,990.00. The tenant confirmed receiving this letter.

On 19 November 2015 the landlord provided a second letter to the tenant setting out the new rent amount and informing the tenant of her current rent arrears. .

On 19 November 2015 the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was served on 19 November 2015 by posting that notice to the tenant's door. The tenant confirmed she received the notice. The 10 Day Notice set out an effective date of 2 December 2015. The 10 Day Notice set out that the tenant had failed to pay rent in the amount of \$1,340.00 that was due 1 November 2015.

The agent LC testified that she is not aware of any reason that would entitle the tenant to deduct any amount from rent.

The agent LC testified that since the landlord issued the 10 Day Notice it has received payments directly from the Province on the first of the month in the amount of \$650.00. I was provided with a receipt for the payment received 1 December 2015 that states that the payment was received on the basis of the tenant's use and occupancy only.

The agent LC testified that the tenant has current rent arrears in the amount of \$4,020.00.

Analysis

The effect of the landlord's subsidy review was to increase the tenant's rent from \$650.00 to \$1,990.00 effective 1 November 2015. The tenant did not pay the difference and the 10 Day Notice was issued.

The law regarding rent increases is set out in sections 41 – 43 of the Act. Section 2 of the *Residential Tenancy Regulation* (the Regulation) exempts certain tenancies from the rent increase provisions:

Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [*assignment and subletting, rent increases*] if the rent of the units is related to the tenant's income: ...

- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
 - (i) the government of British Columbia;
 - (ii) the British Columbia Housing Management Commission;
 - (iii) the Canada Mortgage and Housing Corporation.

On the basis of the landlord's uncontradicted evidence, I find that the housing society has an agreement with the British Columbia Housing Management Commission. The tenant's rent is calculated on the basis of her family's income. On the basis of this evidence, this tenancy is excluded from the application of the provisions in sections 41 to 43 of the Act by operation of subparagraph 2(g)(ii) of the Regulation. There is nothing in the Act or Regulation that permits me to examine the landlord's internal policy for determining the value of the rent subsidy provided. As there is no basis for me to interfere with the landlord's internal calculations, the rent increase from \$650.00 to \$1,990.00 is valid.

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.

There is no evidence to indicate that the tenant was entitled to deduct any amounts 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 failed to pay her rent due 1 November 2015 in the amount of \$1,990.00. The tenant made a partial payment in the amount of \$650.00.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued 19 November 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply.

Subsection 55(1) of the Act sets out that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Section 52 of the Act reads:

In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The 10 Day Notice complies with the requirements set out in section 52 of the Act. In accordance with subsection 55(1) of the Act, I issue the landlord an order of possession effective 31 January 2016.

As the tenant has not been successful, she is not entitled to recover her filing fee.

Conclusion

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

The landlord is provided with a formal copy of an order of possession effective 31 January 2016. 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: January 19, 2016

Residential Tenancy Branch

