



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

CNQ, FF

Introduction

This hearing was held in response to the tenants' application to cancel a two month Notice ending tenancy because the tenants do not qualify for the subsidized rental unit. The tenants have requested recovery of the filing fee cost.

Both parties were present at the hearing. 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 testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

The parties each confirmed receipt of the evidence that was before me. The landlord did not object to the 16 page late evidence submission made by the tenants; received the day prior to the hearing.

Preliminary Matters

An interim decision was issued on December 24, 2015 in response to a request made by the tenants that the application be considered through written submission only. That request was denied and a telephone conference call hearing was confirmed as the hearing method.

Issue(s) to be Decided

Should the two month Notice to end tenancy as the result of a loss of rent subsidy, issued on November 30, 2015, be cancelled?

Background and Evidence

The tenancy commenced on October 1, 2005. Current tenant rent contribution is \$389.00 per month; economic rent is \$1,464.00. Rent is due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

There was no dispute that the Notice ending tenancy was issued on November 30, 2015 and disputed within the required 15 day time-limit.

The landlord and tenants agreed that the Notice had an effective date of January 31, 2015.

The reason indicated on the Notice for ending the tenancy is:

The tenant no longer qualifies for the subsidized rental unit.

There was no dispute that the tenants have signed an Application for Rent Subsidy on an annual basis since the tenancy commenced. Copies of those documents were supplied as evidence.

On September 9, 2015 the landlord's Audit Services Specialist wrote the tenants requesting information on income and assets, as part of an income verification audit. Multiple documents were requested from the tenants with a due date of September 30, 2015. Copies of all requested documents were submitted as evidence; including a *Request for Transcript of Tax Return* form to be submitted to the U.S. Internal Revenue Service.

There was no dispute that both tenants had worked in the U.S. in the past and that the female tenant is an American citizen. The landlord had located information on the internet that led the landlord to believe that income may have been generated in the U.S. and paid to the tenants during the time of the tenancy.

On September 29, 2015 the landlord received a response from the tenants, who said that the *Request for Transcript of Tax Return* form was "outside the purview of the audit." The tenants argued that the Freedom of Information and Protection of Privacy Act (FOIPPA), cited by the landlord as providing the authority for requesting the information, did not relate directly to the audit and that it was unnecessary. The tenants submitted that to sign the *Request for Transcript of Tax Return* would force them to make false declarations.

A copy of the *Request for Transcript of Tax Return* form supplied by the tenants showed areas of the form highlighted by the tenants; drawing attention to text. The form required the signature of the taxpayer or "a person authorized to obtain the tax information requested."

The landlord issued a letter to the tenants dated October 29, 2015; again requesting the information required for the audit. The tenants were given until November 13, 2015 to comply. Required forms were again supplied to the tenants.

On November 13, 2015 the tenants issued a letter to the landlord. The tenants informed that the landlord that they do not have any U.S. tax information for the period requested and that the request is outside of that allowed by the FOIPPA. As the tenants must declare income from outside of Canada on their Canadian tax returns, the *Request for Transcript of Tax Return* form was not necessary. The tenants pointed to clause #4 of the Agreement for Rent Subsidy and submitted that the FOIPPA does not require submission of the *Request for Transcript of Tax Return* form to the U.S. revenue agency.

On November 20, 2015 the landlord responded to the tenants. The landlord acknowledged that the tenants did not wish to sign the *Request for Transcript of Tax Return* for submission to the U.S. internal revenue. However, the landlord was aware of information from a web site that led the landlord to believe that each of the tenants may have held employment in the entertainment industry at various times between 2001 and 2014. As the Canadian income tax return is based on self-reporting by the tenants, the landlord requested the tenants sign the form for submission to internal revenue in the U.S.

The tenants were given an extension to November 27, 2015 to supply all required information for the audit.

Each letter from the landlord warned that the tenancy could end should the tenants not comply with the requirements of the audit.

At the time of the hearing the only outstanding documents were the *Request for Transcript of Tax Return* for submission to internal revenue in the U.S. by each tenant.

The tenancy agreement signed by the parties included a disclosure clause, #11:

If the tenant is eligible for a rent subsidy from BC Housing, the tenant:

- a) Agrees to promptly to provide or cause to provide such information and documentation as is required by the landlord regarding the tenant and the Occupants as required to determine the applicable Tenant Contribution or for audit purposes;*
- b) Consents to the landlord verifying personal information, as defined in the Freedom of Information and Protection of Privacy Act, which consent is required by that Act to enable the landlord to carry out its audit function; and*
- c) Agrees that if the tenant fails to disclose or misrepresents any information required by the landlord to allow the landlord to determine the applicable Tenant Rent Contribution or for audit purposes, such failure or misrepresentation will be deemed to be a material breach of this tenancy*

agreement entitling the landlord to end this tenancy agreement and to recover from the tenant in contract or otherwise the difference between the amount the tenant paid as the Tenant Rent Contribution and the rent payable. This remedy is not exclusive and maybe exercised by the landlord in addition to any other remedies available to the landlord in law or equity or in this tenancy agreement.

(Reproduced as written)

The annual *Application for Rent Subsidy* signed by the tenants included agreement that the landlord may audit the information given. The agreement provided the landlord with permission to contact anyone to obtain a report from any agency in order to confirm information provided.

The landlord said that tenants have breached a material term of the tenancy agreement, by failing to supply the documents requested for audit purposes. The landlord does not understand why the tenants will not comply, as their tenancy is now at risk.

When I asked the tenants why they would not supply the final documentation required for the audit they responded that the FOIPPA barred the landlord from requesting that information. The landlord responded that they are within their legal right to request the U.S. internal revenue information as part of the audit process to confirm the tenants' right to subsidized housing.

The tenants pointed to specific section of the FOIPPA; stating that the request for submission of the forms to Internal Revenue in the U.S. was not required as there was no income to verify; that no such information existed and that the tenants were being compelled to make false declaration on an official form. The tenants submitted that a reasonable third party could not consider the collection of the information as appropriate.

Analysis

Section 2 of the Residential Tenancy Regulation exempts this landlord from the rent provisions of the Residential Tenancy Act. The landlord offers rent subsidies, based on asset and income declaration. The right of the landlord to request asset and income information and to complete audits was included as terms of the tenancy agreement signed by the tenants and forms the basis of the rent subsidy offered each year. The annual *Application for Rent Subsidy* form completed by the tenants also confirmed their willingness to disclose information to aid in establishing the subsidy and for audit purposes.

There was no dispute that the tenants have refused to sign and submit the final documentation that would allow the landlord to fully complete the audit that commenced in September 2015. I find that the landlord has provided the tenants with ample warnings that a failure to comply with the requests, made in accordance with the terms of

the tenancy agreement and the annual rent subsidy agreement. The tenants have been given deadlines by which to comply and each time they failed to cooperate fully by refusing to submit the forms that would allow the landlord to confirm that income has not been generated in the U.S. The tenants have self-reported there is no income; however, the landlord is exercising their right to obtain independent verification via the audit process.

I have considered the tenants' argument that they are not required to sign and submit the document to the U.S. Internal Revenue Service and have rejected that stance. The tenants submit that there is no income to report and that their self-reported income declared on their Canadian income tax returns is ample proof of the absence of U.S. income.

I find, pursuant to section 62(3) of the Act, that the landlord is acting within the terms of the agreement signed by the parties in 2005 and that the audit falls within that agreement. The landlord is exempt from the rent increase provisions of the *Residential Tenancy Act* and is operating under the terms of the tenancy agreement signed by the parties allowing the landlord to obtain information in support of the tenants' right to receive a rent subsidy.

There was no evidence before me to support the tenant's submission that they would be making false statements by allowing the landlord to establish the absence of income generated in the U.S. From the evidence before me the tenants I could not find any reason the tenants would be making a false statement by requesting a transcript of any U.S. tax return. Further, the tenants provided no evidence that the landlord's request breached the tenancy agreement signed, allowing the landlord to complete an audit. The tenants have objected to the collection of income history in the U.S. as a breach of privacy. While the tenants may believe the landlord does not have the right to request the U.S. tax return transcripts I find, on the balance of probabilities, that the collection of information on all potential income and assets forms a reasonable part of the audit process, supported by the terms of the tenancy agreement.

The landlord has provided the tenants with ample opportunity to comply with the terms of the tenancy agreement and the tenants have chosen to refuse to do so.

Therefore, as the tenants' have failed to comply with the terms of the tenancy agreement, but cooperating with the audit, I find that the tenants' application for dispute resolution is dismissed.

Section 55(1) of the Act

55 (1) *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.*

Therefore; based on section 55(1) of the Act I find that the landlord is entitled to an Order of possession.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenants**. This Order may be served on the tenants, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The tenants' application is dismissed.

The landlord is entitled to an Order of possession.

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: February 09, 2016

Residential Tenancy Branch

