



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding AFFORDABLE HOUSING CHARITABLE ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNQ OPQ

Introduction:

Both parties made Applications and attended the hearing. I find that the Notice to End a Residential Tenancy dated February 25, 2016 to be effective April 30, 2016 was served personally and the landlord served their Application by registered mail. They acknowledged receipt of the tenant's Application. I find the documents were legally served. The landlord requests an Order of Possession pursuant to section 49.1 of the *Residential Tenancy Act* (the Act). The Notice to End the Tenancy was issued pursuant to section 49.1 of the Act alleging the tenant has ceased to qualify for the rental unit. The tenant requests that the Notice to End Tenancy be set aside.

Issues: Is the tenant entitled to any relief? Or is the landlord entitled to an Order of Possession pursuant to sections 49.1 and 55 of the Act?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The original tenancy began February 2015 for a fixed term of 5 months and then went month to month. The current rent is \$510 as subsidized and the tenant paid a security deposit of \$450. The landlord served the Notice to End Tenancy pursuant to section 49.1 stating the tenant has ceased to qualify for this subsidized unit. The landlord gave evidence that they work with a Transition House who takes battered women and works closely with social workers. The property manager said he was contacted by this House saying the tenant's sponsorship had broken down and asking for housing for her. He said a counsellor, C., reviewed all the requirements to qualify for their subsidized housing and the documents were all explained to her. She signed a tenancy agreement with all the addendums and the resident manager went over them all with her. Her rent was based on her information. Market rent is \$1500 a month but her rent was \$510 after applying the subsidies. During the initial 5 months, management noticed a male coming and staying sometimes with the tenant. Then it increased significantly until the male appeared to be staying with the tenant all or most of the time.

On November 19, 2015 a letter was sent to all tenants explaining the policies again and that no person undeclared on the filed information was to stay more than 14 days a

year. They saw the male continued to stay with the tenant as witnessed by security cameras showing him coming in the evening and leaving the next morning. The tenant had a distinctive car when she first rented, then the male began driving it and the tenant got a different car. They had a number of complaints from other tenants that this tenant was not abiding by the rules. They spoke to the tenant and her social worker and explained it had to stop. However, the resident manager saw again the male's vehicle parked overnight and him leaving in the morning. The property manager saw this too.

The male was requested to provide proof of residence elsewhere. He provided an unsigned note with a telephone number from an alleged room mate. The property manager said he called it numerous times and got no answer. The male also provided a driver's license on which the address did not agree with the note. The property manager contacted the Ministry which said there were possible fraud and immigration issues. As the tenant was having a baby, she requested to be allowed to have her Mom stay during the birth. The landlord agreed based on her assurance the male would no longer be coming to stay in the building. However, he still is coming and even stayed last night. They have asked the tenant numerous times to add the male to the tenancy as this affects the subsidy as market rent is \$1500. They served a two month Notice to End her tenancy as she no longer qualifies for this housing. The only response on March 3, 2016 was the Application for Dispute Resolution stuck underneath the door from the tenant.

The tenant said she is a single Mom and her ex-husband only visits to see his daughter (her oldest child). When I asked her to explain the landlord's evidence, she said she was not aware of the 14 day rule and he sometimes stays but not all the time. She complained of harassment by management. She described it as the manager banging on her door and leaving notes regarding the boyfriend problem and the Notice to End Tenancy. She said it made her ill and she had to spend two days in hospital. The landlord said they have entered her unit 4 times, once for pest control for mice reported by her, once in respect to her signing her tenancy agreement, once to fix her bathroom fan and once to show a prospective tenant. He said they gave her legal notice on each occasion.

Analysis:

The Notice to End a Residential Tenancy is based on section 49.1 of the Act. Section 49.1 (2) states a landlord may end a tenancy if the tenant ceases to qualify for the rental

unit. A subsidized housing unit is defined in section 49.1 as one occupied by a tenant who is required to demonstrate that the tenant or another proposed occupant met eligibility criteria related to income, number of occupants or other criteria. I find the weight of the evidence is that this tenant failed to demonstrate that she met eligibility criteria. I find the landlord's evidence credible that she has had a male occupying the unit with her as the evidence is well supported by security camera evidence and observations of the witnesses present for the hearing. I find the tenant's evidence inconsistent as she first said the male only visited to take out his daughter and then said he stayed sometimes. I find the information provided in evidence does not support the tenant's allegation that he lives elsewhere. His address as given in an unsigned note and that on his Driver's license does not agree. I dismiss the Application of the tenant to set aside the Notice and I find the landlord entitled to an Order of Possession. The landlord agreed to an effective date of May 31, 2016 for the Order of Possession and said they would waive the filing fee of \$100.

Although the landlord said the tenant did not serve her Application legally according to section 89, I find that is moot at this point as her Application is being dismissed in any case. In respect to the tenant's allegations of harassment, I find the only instances she gave were when the landlord was serving Notices to Enter, warning letters regarding the additional occupant and the Notice to End Tenancy. I find the weight of the evidence is that the landlord was asserting their legal rights under section 29 regarding entrance and section 49.1 regarding End of Tenancy. I find this is not harassment. I dismiss the Application of the tenant in its entirety without leave to reapply.

Conclusion:

I grant the landlord an Order for Possession effective May 31, 2016 as requested. I find they have waived the filing fee so none is awarded.

I dismiss the Application of the tenant in its entirety without leave to reapply. No filing fee was involved.

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: April 06, 2016

Residential Tenancy Branch