



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING NON PROFIT RENTAL ASSOCIATION, BC
HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnq, mndc, ff

Introduction

The tenants apply for an order to cancel a Two Month Notice to End Tenancy, given because the tenants do not qualify for subsidized rental unit.

The tenants also applied for a monetary claim as against the landlord for \$20,000.00, purporting to be a claim for pain and suffering and negligence by the landlord. At the start of the hearing this claim was withdrawn by the tenants, and I dismissed the claim accordingly.

The tenants, representatives for the landlord (a non-profit housing society) and representatives for BC Housing were present and testified at the hearing.

Issue(s) to be decided

Should the subject Notice be cancelled, or is it valid to end the tenancy and entitle the landlord to an Order of Possession?

Background and Evidence

This tenancy of the tenants with the landlord (a non-profit housing society) began on March 1, 2003. Clause 12 of the written tenancy agreement as between the tenants and the landlord provides that under certain circumstances, the landlord may agree to the tenant paying a rent contribution that is less than the stated rent (which at the time the agreement was made was \$1,430.00). The current market rent is \$1,850.00, but throughout the tenancy the rent has been subsidized, and the current subsidized rent is \$1,120.00. Clause 12 also provides that the tenant must annually or from time to time as required by the landlord, submit a form with a declaration as to the number of tenants and occupants in the premises, including names, ages, gross incomes and assets. Clause 12 permits the landlord to audit this information, and specifies that a failure to provide the information or a misrepresentation of the facts by the tenant would be cause for termination of the tenancy agreement. A lengthy audit process was in fact initiated

May 17, 2013, and was completed January 21, 2016. This process was a “Verification Audit” conducted by BC Housing.

Evidence and testimony of the audit process and results was provided by the representative of BC Housing. On January 21, 2016 BC Housing sent the tenants a letter confirming that the audit was completed, and that BC Housing had overpaid a portion of the tenants’ rent subsidy. Among other things, the audit found:

- a. a discrepancy as between the tenants’ self employed income on their income tax returns and on their Application for Rent Subsidy forms;
- b. that limited monthly living expenses had been paid from the tenants’ bank and credit card accounts;
- c. that the tenants had received cash revenue that was never deposited into their bank accounts;
- d. that the tenants had explained that some monthly living expenses were paid with cash;
- e. that the sum declared by the tenants as expense for monthly groceries (\$280.00) was unreasonably low for a family of four, and the audit therefore employed a figure of \$700.00, a Statistics Canada figure for average grocery expense;
- f. that the total of the tenant’s cash revenue, above and beyond their bank deposits totalled \$16,860 in 2012;
- g. that 4 undisclosed bank accounts were discovered in the course of the audit.

The January 21, 2016 letter advised that the declaration of self-employment income was based upon an honor system, and had been consistently underreported, as a result of which the landlord could not accurately calculate the subsidy, and the tenants no longer qualified for the subsidy. The letter referenced Section 4 of the Application for Rent Subsidy, in which the tenants had agreed that if they failed to disclose or misrepresented any information requested by the landlord/BC Housing to allow the landlord/BC Housing to determine the applicable Tenant Rent Contribution or for audit purposes, such failure or misrepresentation would allow the landlord to end the applicants right to occupy the premises.

On February 17, 2016, the landlord wrote the tenants advising that the BC Housing audit was completed, and that they no longer qualified for subsidy. A Two Month Notice To End Tenancy was provided to the tenants, effective to end this tenancy April 30, 2016.

On February 26, 2016, the tenants filed a dispute of the Notice. In their materials, and in testimony, they submit that the results of the audit is without merit, that it lacks clarity, that flawed methods were used, that the audit took too long, and that

they were obliged to provide information that was unrelated to the process. The tenants further contend that:

- a. the bank accounts discovered by BC Housing were inactive;
- b. that accounts had been previously been used to pay off a line of credit, but that their parents had paid off the line of credit;
- c. they live frugally, and in fact only pay about \$280.00 per month for food;
- d. they complied with the requests for information.

The representative for BC Housing responded that:

- a. gifts or loans from parents is income required to be disclosed, and the audit revealed that the tenants' parents had in fact paid over \$19,000.00 to or for the benefit of the tenants, including \$9,526.00 that had been included as disclosed income, and \$9,900.00 cash that the tenants alleged was from their parents but would not provide any evidence about, and therefore was considered as undisclosed income;
- b. all 4 bank accounts discovered were active accounts. Two of these were joint accounts as between the female tenant and her children. The accounts were being used for the deposit of income including child tax credits and GST credits, and for credit card payments;
- c. even if the tenants' grocery expense were believed and accepted, the total of the cash revenue not deposited (as recorded in Table 1 of the Audit) demonstrated significant underreported income.

Analysis

I find that the explanations provided by the BC Housing representative as to the process and results of the audit were forthright and clear. These submissions were completely consistent with the audit report itself. I find no basis for the tenants' submission that the audit was unfair or without merit. On the contrary, I fully accept all the testimony of the representatives of BC Housing, as reflected above. As revealed by the testimony as to the discovery of undisclosed money paid by parents to reduce a line of credit, and of four active bank accounts, it is evident that tenants failed to fully comply with their obligations of disclosure, and failed to accurately report all income received. As a result, and as stipulated in Clause 12 of the tenancy agreement and the provisions of Section 4 of the Application for Rent Subsidy, I find that the tenants cease to qualify for the rental subsidy and for this rental unit. The Two Month Notice to End Tenancy is effective to end this tenancy April 30, 2016. The tenants' application to cancel the Notice is dismissed, as is their claim to recover their filing fee from the landlord.

Section 55 (1) of the Residential Tenancy Act provides 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 the landlord's notice is proper as to form and content, and the tenant's application to cancel the Notice is dismissed. Those conditions are met, and accordingly, an Order of Possession is granted to the landlord, effective April 30, 2016.

Conclusion

The tenants' application is dismissed. The landlord is granted an Order of Possession, effective April 30, 2016.

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 14, 2016

Residential Tenancy Branch