



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEWTON KINSMEN HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing was reconvened to address the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for Unpaid Rent or for Breach pursuant to section 55; a monetary order for unpaid rent, damage or loss pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

At the original hearing date (April 25, 2016), the tenant sought and was granted an adjournment. An interim decision was issued (inviting both parties to submit further evidence with respect to the status of the tenant's housing subsidy. Both parties attended the reconvened hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent?

Is the landlord entitled to a monetary order for unpaid rent, damage or loss?

Is the landlord entitled to authorization to recover the filing fee from the tenant?

Background and Evidence

This tenancy began on April 1, 2013 as a month to month tenancy. The current market rental amount is \$1209.00 payable on the first of each month. The tenant has paid a subsidized amount since the outset of her tenancy. The landlord submitted that the tenant has failed to meet the subsidy requirements for her current rental unit housing. Therefore, the tenant is subject to a market rental amount. The landlord testified that the tenant has not paid the market rental amount for several months. The landlord has applied to retain the security deposit towards a monetary award and for an Order of Possession for Unpaid Rent.

The landlord referred to the signed residential tenancy agreement with a provision with respect to occupants;

...the Landlord has selected the Tenant on the basis of the number of Tenants and Occupants and the Tenant's and Occupant's income and assets... It is a condition of this Tenancy Agreement that in the event of a change in the number of Tenants or Occupants in the Premises the Landlord shall have the right to terminate this Tenancy Agreement. The Tenant agrees to notify the Landlord promptly of any change in the number of Tenants or Occupants in the Premises.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent, submitting that the tenant has failed to pay the market rental amount with respect to her tenancy. The landlord testified that, when the tenant moved in to the residential premises, she was housed in her particular rental unit because she had a child in her care. The landlord provided undisputed testimony that the tenant's child does not currently reside with the tenant. The landlord has provided letters to the tenant on January 29, 2016 and March 7, 2016 to advise the tenant that she must vacate the residence, given her current circumstances. The landlord submitted a letter from the provider of the subsidy stating that, in this *type* of circumstances, a tenant is considered to be "over-housed". The letter did not refer specifically to this tenancy.

The tenant explained, testifying that her child is outside of her care on a temporary basis and that the child will return to her care. She provided some documents in support of the existence of a plan to return the child to her care. Furthermore, she testified that she continues to pay the subsidized amount for her rental unit. The landlord testified that, on receiving rental payments from the tenant, he has issued receipts "for use and occupancy" only.

Analysis

When a landlord applies to end a tenancy, it is essential that he follow the process as outlined in the *Residential Tenancy Act*. In accordance with section 52 of the Act, the landlord must provide notice that reflects the appropriate amount of notice, the appropriate type (reason for) notice as well as the appropriate form to clearly communicate the grounds upon which the landlord seeks to end the tenancy and the obligation on the tenant to respond or vacate the residence.

While the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent, the circumstances alleged over the course of this hearing are that the tenant no longer qualifies for subsidy in accordance with the residential tenancy agreement. Section 49.1

of the Act provides the structure with which to address a situation where a tenant no longer qualifies for subsidy.

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2) Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(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.

In accordance with sections 50 and 52 of the Act, as well as the section provided above, and the circumstances relied on by the landlord, the issuance of a 2 Month Notice to End Tenancy When a Tenant Ceases to Qualify for Subsidy ("2 Month Notice") is the appropriate notice to serve to the tenant. Once served with a 2 Month Notice, the tenant can accept or dispute the notice in accordance with section 49.1 above. As of the date of this hearing, and despite suggesting that the tenant has both breached a material term of the tenancy and that she no longer qualifies for a subsidy, the landlord had not provided the tenant with a 2 Month Notice to End Tenancy to the tenant.

I find that the landlord has relied on the incorrect notice and has not, at this hearing, justified the landlord's decision to change the tenant's rent from subsidized to market rent. Therefore, I find that the evidence provided does not sufficiently show that the tenant has failed to pay rent in accordance with her tenancy agreement.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application.

Conclusion

I dismiss the landlord's application in its entirety.

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: June 15, 2016

Residential Tenancy Branch