



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNQ OPQ MNDC FF

Introduction:

Both parties attended the hearing and confirmed that the both the Notice to End Tenancy dated June 15, 2016 to be effective August 31, 2016 and the Application for Dispute Resolution were served personally. I find the documents ere legally served pursuant to sections 88 and 89 of the *Residential Tenancy Act* (the Act). The tenant applies to cancel the Notice to End the Tenancy which was issued pursuant to section 49.1 of the Act alleging they have ceased to qualify for the rental unit.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed that the tenant has lived in subsidized housing for about 20 years. The current tenancy agreement for this unit commenced September 1, 2012 with a stated market rent of \$1300 and a security deposit of \$450 was paid. The landlord explained that their mandate is to provide subsidized affordable housing and their duty is to accommodate those persons who cannot afford market rent.

In their most recent calculations based on the tenants' income, the tenants rent is \$1477 which is above the market rent for the unit. However, they may only offer units based on income calculation. They have offered the tenant and her adult son units in two other nearby buildings which are market unit buildings and where the rent would be considerably less than \$1477 a month. The tenant agreed to take one but then declined.

The tenant said she believed their income was miscalculated as her son only works part time. The landlord said the calculations were correct and refuses to recalculate. The tenant said she misunderstood and believed she was only offered an application for the other available unit and she may have been refused. The landlord assured her that when they offered her another unit, she would get it if she accepted it.

After further discussion and my explanation that I did not have jurisdiction to determine the amounts of subsidized rent based on income, the parties settled on the following terms and conditions. The tenant's advocate and she discussed the matter and obtained some changes before agreeing.

Settlement Agreement:

- 1. The tenants' rent will be \$1300 a month commencing September 1, 2016.**
- 2. The tenants will be allowed to stay in their present unit until a two bedroom market unit in the same neighbourhood is available and offered to them.**
- 3. The landlord will obtain an Order of Possession effective one month from service.**
- 4. The tenant waives her claim for \$12,100.20 for loss of peaceful enjoyment.**
- 5. This settles all matters between the parties regarding this tenancy to this time.**

Analysis:

I find the weight of the evidence is that the tenants no longer qualify for a subsidized unit in this building so the Notice to End Tenancy pursuant to section 49.1 of the Act is upheld. I find the dispute arose over calculation of a subsidized rent over which I have no jurisdiction pursuant to section 4(k) of the Act and section 2 of the *Residential Tenancy Regulation*. However, based on the above noted agreement, I find the tenant is entitled to remain in their present unit until a two bedroom market unit in the same neighbourhood is available and offered to them. I find the landlord is entitled to an Order of Possession effective one month from service on the tenant.

Conclusion:

I find the landlord entitled to an Order of Possession effective one month from service. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. I dismiss the tenant's application without recovery of the filing fee.

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: August 09, 2016

Residential Tenancy Branch

