



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MT, CNQ

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for more time to make an application pursuant to section 66; and cancellation of the landlord's to cancel the landlord's 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit ("2 Month Notice") pursuant to section 49.1.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution and evidence package. The tenant confirmed receipt of the landlord's evidence. The tenant was represented by a lawyer.

Issue to be Decided

Should the landlord's Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on August 1, 2012 as a 5 month fixed term tenancy. The tenancy continued, with a variety of subsequent fixed term leases signed over the course of the following 4 and one half years. The tenant continues to reside in the rental unit and pay \$590.00 on the 1st of each month (her subsidized rental amount). The landlord continues to hold a \$450.00 security deposit paid by the tenant on August 1, 2012.

The landlord testified that the tenant no longer qualifies for subsidized housing at the residential property. The landlord testified that he and his organization gave several opportunities to the tenant to remain in the rental property. The landlord provided complaint logs and warning letters to show that the children's father's ("CF") presence

resulted in disturbance to the residential premises and other occupants. The landlord submitted five letters dated from June 2015 to November 2016 that provided warnings to the tenant regarding noise, parking and guests.

The landlord's submissions include a letter to the tenant dated October 1, 2016 stating, *Thank you for completing the Application of Rent Subsidy. Based on the new information submitted, you [sic] Tenant Rent Contribution has been calculated [as] \$590.00."*

The letter also reiterates what is stated on the tenancy agreement: that the tenant must report any change in income or family composition immediately.

Both parties agree that, as of November 10, 2016 the landlord allowed the tenant's request to add CF to her tenancy agreement. After cautioning the tenant, the landlord added the CF's name to the tenancy on what they described as "compassionate grounds". A new application for housing was completed including CF. The landlord submitted a residential tenancy agreement signed by both the tenant and CF on November 15, 2016 indicating a start date of December 1, 2016 and a market rental amount of \$1700.00 payable on the first of each month. The tenant testified that, once CF moved in, he did not keep his word on obtaining a subsidy or paying his portion of the rent. The landlord made a written request, in two letters both dated November 23, 2016 requesting that CF provide further information about his income.

On November 28, the landlord wrote to the tenant and CF indicating that, if CF's income information was not received by December 21, 2016, the market rental amount would apply to this tenancy. On December 21, 2016, the landlord wrote to the tenant stating she no longer qualifies for subsidized housing and that her rent *should be* increased to the market rent amount. The letter stated,

[The landlord] could legally apply for an Order of Possession for the unit and a monetary order. This could possibly create a financial hardship for your family. Instead, the landlord has decided to maintain the previous subsidized rent of \$590.00 for the months of December 2016 through February 2017 and issue you a 2 Month Notice to End Tenancy because the Tenant Does Not Qualify for Subsidized Rental Unit.

The landlord issued a 2 Month Notice to End Tenancy to the tenant on December 21, 2016 with an effective date of February 28, 2017. The landlord relied on CF's lack of provision of information to assess the subsidy for the rental unit. The landlord also testified that he relied on information received that the tenant's children were no longer residing in the rental unit.

At this hearing, the tenant provided undisputed testimony that she told CF to move out of the rental unit after the receipt of the November 28, 2016 letter and that he vacated the unit prior to December 21, 2016. Her lawyer argued that this move-out eliminated the grounds upon which the landlord relied to end her tenancy. Her lawyer also argued that it was not until approximately two weeks after the issuance of the 2 Month Notice that the tenant's children were temporarily removed from the residence – a fact which the tenant advised the landlord of through a third party.

The tenant disputes that her children's temporary removal is grounds to end her tenancy. Her lawyer equated the removal to staying with family or another stay away from the family home. The tenant and her counsel submitted documentary evidence to support the claim that the tenant's children will be returned to her and that she must have sufficient housing to accept their return. After a brief adjournment of the original hearing of this matter, the tenant submitted 3 letters;

1. A letter from the Ministry of Child and Family Development representative stating,
The children have not been removed, but currently cannot reside with [the tenant] during this time... it is expected that once MCFD is satisfied the children can go back home to their mother, that [the tenant] has a safe home for the children.
2. A letter from the tenant's lawyer stating,
...[the tenant] is now allowed to have supervised access to her three children.
3. A letter from the tenant's legal family counsel
...there has been no removal of the children nor any [family] court involvement...

The letters submitted on behalf of the tenant and with respect to this residential tenancy matter indicate that, while the tenant's children do not currently reside with her, this absence is temporary, the children will be returned and the tenant is required to have appropriate housing for the children to return to. The tenant also submitted two doctor's letters confirming that she is currently pregnant. The tenant's testimonies as well as her documentary submissions (confirmed by her lawyer) provide evidence that she still receives her rental subsidy.

The landlord submitted a residential tenancy agreement addendum for this hearing that states failure to disclose information to assess subsidy or a misrepresentation may be a

material breach of the tenancy. The landlord's logs indicate that, on or about January 4, 2017, the landlord became aware that the tenant's children were not currently residing in the rental unit.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 2 Month Notice to End Tenancy on December 21, 2016, the landlord claimed that the tenant ceases to qualify for the subsidized rental unit.

At this hearing, the undisputed testimony of the tenant was that she asked CF to move out of the rental unit prior to December 21, 2016. I accept her claim that this move-out prior to the issuance of the 2 Month Notice eliminated the grounds for the 2 Month Notice; that the co-tenant's income was not provided. In his testimony, the landlord confirmed that he was aware that CF was no longer living in the residence. According to the evidence provided for this hearing, it was not until approximately two weeks after the issuance of the 2 Month Notice to End Tenancy that the tenant's children were temporarily removed.

In his testimony, the landlord relied mainly on the undisputed fact that the tenant's children do not currently reside with her in her rental unit and argues that therefore the tenant no longer qualifies for subsidized housing. At the first hearing, the tenant claimed this change was temporary. Prior to the second hearing, the tenant submitted evidence to refute the landlord's claim that her children no longer resided in the rental unit.

Through lawyer and ministry letters, as well as her own testimony, the tenant proved that the removal of her children is temporary. I accept the tenant's testimony that her children's absence from the residential premises is temporary. I also accept the tenant's documentary evidence that the children will be returned to their mother and that they will require a home. Her undisputed testimony is that she continues to be paid her full subsidy amount as of the date of this reconvened hearing.

Furthermore, I find that the onus falls on the landlord to prove that the tenant no longer qualifies for subsidy. The landlord's residential tenancy agreement addendum states that failure to disclose information to assess subsidy or a misrepresentation *may* be a material breach of the tenancy. I find that the tenant has not failed to disclose information to assess a subsidy. I find that, when she became aware that her prospective co-tenant did not disclose, she acted in a timely manner to address this failure by asking him to move out. I find that, although the tenant notified her landlord

that her children were not residing in the unit, she was not required to do so as the change to her family composition was temporary. I find that the tenant's children continue to reside in the rental unit, as per the direction of the ministry but are temporarily housed elsewhere.

In deciding this matter, I rely on the evidence, both testimony and documentary evidence provided by both parties at this hearing. Particularly, I rely on the landlord's letter dated October 1, 2016 stating that the tenant, applying on her own, continues to qualify for a rent subsidy at \$590.00. I accept the testimony of the tenant that she continues to receive and pay her subsidized portion of the rent to the landlord as assessed October 1, 2016. I also rely on the fact that both parties agree CF no longer resides on the property. Finally, I find that the tenant has provided evidence, on a balance of probabilities to show that her children will return to her home and are absent from their residence on a temporary basis.

I find that the landlord has not met the onus in upholding the 2 Month Notice to End Tenancy. Therefore, I grant the tenant's application to cancel the notice to end tenancy.

Conclusion

As per my interim decision, I allow more time for the tenant to make her application to cancel the notice to end tenancy.

I grant the tenant's application and cancel the notice to end tenancy dated December 21, 2016. The tenancy shall continue until ended in accordance with the *Act*.

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 6, 2017

Residential Tenancy Branch