



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [name suppressed to protect privacy]

DECISION

Dispute Codes CNQ, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the "Two Month Notice"); and
- recovery of the filing fee for their application from the landlord.

The landlord's agent (the "landlord") and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issues to be Decided

- Are the tenants entitled to cancellation of the landlord's Two Month?
- Are the tenants entitled to recover the filing fee for their application from the landlord?

Background and Evidence

The undisputed evidence established that the tenants entered into a month to month tenancy on October 1, 2013, pursuant to a written tenancy agreement signed August 23, 2013. The tenants reside in a subsidized housing unit where rents are determined by the tenants' income and assets. The tenants are required to provide household income and asset information to the landlord from time to time. The tenants' portion of the market rent is determined based upon the financial information provided by the tenants. Rent is due on the first day of each month.

Landlord's Evidence:

The landlord testified that the tenants have failed to disclose and/or misrepresented supporting documentation requested in order to complete and/or verify their Application for Subsidy. The landlord argued that the tenants do not qualify for the subsidized rental unit as the tenants failed to:

- disclose a joint mutual fund account (the "Investment");
- account for \$13,000.00 from the sale of foreign property; and
- disclose that Tenant F.H. was self-employed.

The landlords sent the tenants a Two Month Notice by mail which the tenants acknowledged receiving on February 16, 2017. The landlord's reason for ending the tenancy set out in the Two Month Notice is that the tenants no longer qualify for the subsidized rental unit. The effective move out date shown on the Two Month Notice is April 30, 2017.

The landlord testified that they became aware that the tenants had other assets and income upon reviewing the tenants' 2015 Income Tax Returns which showed dividend income; capital gains, and income from self-employment for Tenant F.H. The landlord sent the tenants a number of letters requesting further documentation to verify the tenant's assets and income. The landlord submitted a copy of the letters sent to the tenants since October 4, 2016. The landlord testified that the tenants also received three previous review letters with the same content as the letter dated October 4, 2016 (the "Review Letters").

The documents that the landlord received from the tenants in response to their requests for further information included a mutual fund statement showing a balance of over \$20,000 in the mutual fund investment account. The landlord testified that the Investment had not previously been disclosed by the tenants.

The landlord argued that the tenants were aware of their obligation to disclose the Investment as part of their assets. The landlord testified that the letter dated October 4, 2016 and the review letters describe mutual fund statements as documentation that must be submitted.

The further documentation submitted by the tenants to the landlord also included information that established that the tenants sold property they held in a foreign country for \$31,000.00 CDN on December 12, 2013. The landlord testified that the tenants have not submitted sufficient documentation to account for \$13,000.00 of the sale proceeds.

The landlord testified that Tenant F.H did not disclose that she was earning income through self-employment. The landlord testified that they became aware that the tenant was self-employed when they saw commission income declared by the tenant on her 2015 Income Tax Return. The landlord testified that in August 2016 the tenants asked for a reduction in their portion of the rent on the basis that they have no assets and Tenant F.H. has no income. The landlord testified that Tenant F.H. did not disclose that she was self-employed when she declared no income on the Applications for Subsidy.

Tenants' Evidence:

The tenants testified that they have responded to all the landlord's requests for further documentation. The tenants acknowledged receiving the letter dated October 4, 2016 as well as the previous review letters referred to by the landlord.

The tenants testified that they deposited all but \$13,000.00 of the sale proceeds from their property into a joint mutual fund investment account. The tenants testified that they left the remaining \$13,000.00 with a family member overseas. The tenants acknowledged that the copy of the statement for the Investment shows a current balance of over \$20,000.00. The tenants did not have any documentation in regards to the \$13,000.00. The tenants argued that they have accounted for the \$13,000.00 with their explanation which also accounts for why there is no documentation.

The tenants acknowledged that they did not disclose their Investment on their Applications for Subsidy. The tenants testified that they did not understand that they were required to provide their Investment information as part of their Application for Subsidy or for any review. The tenants acknowledged that they disclosed the Investment after the landlord's requests for further documentation.

Tenant F.H. acknowledged that she did not provide an amount for income on her Applications for Subsidy as she never knew what she would earn in commissions to be able to estimate an amount.

The tenants are seeking to cancel the Two Month Notice.

The tenants are seeking to recover the \$100.00 filing fee for their application from the landlord.

Analysis

Based on the testimony and evidence, and on a balance of probabilities, I find as follows.

Pursuant to section 49.1(2) of the *Act*, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant ceases to qualify for the rental unit.

I find that there is there is sufficient evidence to satisfy me that the tenants provided insufficient information and documentation that was required of them in completing their Application for Subsidy. Therefore, I find that the tenants cease to qualify for the subsidized rental unit.

The tenants acknowledged that they did not disclose their Investment at the time of making their Applications for Subsidy. I find that there is insufficient evidence to support the tenants' assertion that they didn't understand what was required of them. I find that the tenants were given clear instructions in the correspondence provided by the landlord indicating that mutual fund statements were required to be submitted.

While the tenants have provided an explanation to account for the \$13,000 of the net sale proceeds, I find that the tenants have provided insufficient documentation to verify their account. Therefore, I agree with the landlord that the tenants have not sufficiently accounted for the \$13,000 of net sale proceeds without producing any further documentation.

While the tenants have provided a plausible explanation as to why Tenant F.H. did not declare an income when she was earning income through commissions, I find that the tenants did not disclose the fact that Tenant F.H. was self-employed. I accept the evidence of the landlord that the tenant was required to disclose that she was self-employed and that she did not do so. I find that the information supplied by the tenants was misleading by not declaring an income for Tenant F.H in addition to not disclosing the fact that Tenant F.H. was self-employed.

For the reasons stated above, I find that the tenants are not entitled to cancellation of the Two Month Notice. Therefore, I dismiss the tenants' application and the Two Month Notice is upheld.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, section 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

I find that the Two Month Notice complies with section 52 of the *Act* and it is valid. I find that the tenants were served with the Two Month Notice on February 16, 2017 which requires the tenants to vacate the rental unit on April 30, 2017. Therefore, pursuant to section 55 of the *Act*, I find that the landlord is entitled to an order of possession to take effect at 1:00 p.m. on April 30, 2017.

As the tenants' application was not successful, I find that the tenants are not entitled to recover the filing fee for their application from the landlord.

Conclusion

The tenants' application is dismissed and the Two Month Notice is upheld.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **April 30, 2017 at 1:00 p.m.**, which must be served on the tenants. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 10, 2017

Residential Tenancy Branch