



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes CNQ, MT, OPQ, FF

Introduction

In the first application the tenant seeks to cancel a two month Notice to End Tenancy given to her on the ground that she has ceased to qualify for subsidized housing. The Notice gives an effective date to end the tenancy on April 30, 2017.

In the second application the landlord seeks an order of possession pursuant to that Notice.

The tenant's application falls outside the fifteen days permitted by s. 49.1(5) of the *Residential Tenancy Act* (the "Act"). At hearing, the landlord's representatives consented to extend the time for the tenant's application and so I do so.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant ceased to qualify for this rental unit?

Background and Evidence

The rental unit is a two bedroom apartment in a 61 unit building. The tenancy started in July 2013. The current rent is \$1500.00 per month, due on the first of each month. The tenant has qualified for a rental subsidy through the British Columbia Housing Management Commission ("BC Housing") and pays \$559.00 of that rent. The

remainder is paid to the landlord, a non-profit housing association, directly from BC Housing.

The landlord holds a \$450.00 security deposit.

In September 2016 the tenant submitted an "Application for Rent Subsidy" to BC Housing. The applications are reviewed annually. The application requires disclosure of, among other things, the unit size, the residents and each resident's gross monthly income.

In her application of September 2016, the tenant listed the residents to be herself, and her two sons. Neither of the sons, one aged 19 and other two and one-half years old, was shown to have any income.

Since then the older son has moved out, perhaps last fall, and the tenant's infant son has been removed from the home by the government. This also may have occurred last fall.

There is no immediate likelihood that the infant will be returning to reside in the apartment. The tenant's spokesman indicates that a hearing regarding the return of the child is scheduled to be held in December 2017.

During the hearing the suggestion was raised that the tenant is a hoarder and cannot keep her residence reasonably clean. This allegation was acknowledged by the tenant's mental health support worker, Ms. K., who also indicated that the tenant is addressing her hoarding habits and is making progress. The apartment appears to have had the clutter significantly reduced.

In my view the hoarding issue is not particularly germane to the question of whether or not the tenant has ceased to qualify for this subsidized rental unit.

Ms. L.S. for the landlord points to an Addendum to the tenancy agreement that obliges the tenant to report any change to the number of occupants and stating that the reporting requirement is material term entitling the landlord to end the tenancy.

In February 2017, prior to the giving of this Notice, the landlord wrote to the tenant about the fact neither of her children were living with her. The letter required the tenant, through her social worker, to give a firm date by which her infant son would be returned to the home "or your rental subsidy will be withdrawn."

Ms. L.S. for the landlord confirms that BC Housing continues to subsidize the tenant's rent. It is not clear if or when that subsidy will be ending or if it will end before September, when the tenant must undergo the annual review of her situation and re-apply to BC Housing for a subsidy.

Ms. L.S. states that the tenant is "over-housed." She is living alone in a two bedroom suite that should properly be made available to someone who needs a two bedroom suite. She points to a letter from a "tenant liaison," Ms. D.C. who states that the tenant "is in a subsidized two-bedroom unit and has had neither child living with her for over a year, once the court date arrives, it will have been close to two years. We are unable to keep her in a subsidized family unit without her children."

The tenant's advocated notes that the tenant has applied to be moved to a smaller unit. Her hoarding habit has prevented this landlord from giving a positive reference for her and so she stays where she is.

Analysis

Section 49.1 of the *Act*, makes it clear that a tenancy in subsidized housing can end if a tenant ceases to qualify for the rental unit. It reads:

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.**

(emphasis added)

By regulation, BC Housing is a prescribed public housing body. I am satisfied that the landlord is a housing society that has an agreement regarding the operation of residential property with BC Housing and so it is also, by regulation, a public housing body.

The essential question is therefore: has the tenant ceased to qualify for the subsidized rental unit?"

The tenant agreement used by landlord does not appear to refer to the fact of subsidized housing, however, the Addendum to the tenancy agreement does.

The Addendum is entitled "ADDENDUM FOR UNITS WHERE THE RENT IS RELATED TO THE TENANT'S INCOME" and begins by saying that the landlord and tenant acknowledge that the rent of the unit is related to the income of the tenant.

The document is composed of four parts. The first part states the tenant will complete a declaration stating the number of occupants, their names, birth dates, gross incomes and assets at least once every twelve month period and from time to time as requested by the landlord. That is the document the tenant submitted in September 2016. There is no evidence that she has been requested to complete another similar declaration.

The second part of the Addendum deals with failure to disclose information or making a misrepresentation. In it the tenant consents to disclosure of certain private information and agrees "that if the tenant fails to disclose or misrepresents any information requested by the landlord" then "it will be deemed to be a material breach . . . entitling the landlord to end this tenancy"

The landlord has not proved at this hearing that the tenant has failed to disclose or misrepresent any information requested by the landlord. There is some suggestion that one of both children was gone by the date of the September 2016 subsidy application but that has not been proved beyond mere speculation. In any event, the Notice to End Tenancy in question here was not given on the ground that that the tenant had committed a material breach of her tenancy agreement (a cause for eviction under s. 49(1)(h) of the Act).

The third part of the Addendum deals with occupants and guests. The landlord relies upon this particular part to justify its claim of "overhousing" and so I reproduce it in full:

The landlord has selected the tenant on the basis of the number of occupants among other criteria. The tenant agrees that only those persons listed as tenants and occupants are allowed to live in the rental unit during the term of this tenancy, unless the landlord otherwise consents in writing. Any change in the number of occupants is material and of great importance to the landlord and entitles the landlord at their discretion to end this tenancy agreement. The tenant agrees to notify the landlord promptly of any change in the occupants. If the tenant is eligible for a rent subsidy, the tenant agrees that any person that resides with the tenant in excess of 14 days, whether or not consecutive, in any 12 month period, without the written consent of the landlord, will be considered an occupant and:

- (a) That person's income must be declared to the landlord immediately;
- (b) That person, if 19 years or older, must agree to be a tenant under this agreement by signing an addendum to this tenancy agreement and must be approved by the landlord as a tenant;; and
- (c) Failure to comply with these provisions entitles the landlord to end this tenancy agreement.

On reading the Addendum as a whole it is apparent that the third part is intended to capture situations where there are more occupants than listed, living in the rental unit, thus potentially increasing the gross income of persons in the rental unit, leading to a re-assessment or even a withdrawal of the tenant's subsidy.

The Addendum begins by indicating that the rent for the unit is related to the income of the tenant. It does not say that the renting of the unit is related to the number of occupants or that there is a minimum occupancy requirement.

The third part of the Addendum begins by stating that the landlord has selected the tenant on the basis of the number of occupants, among other criteria. That may be read to mean that the landlord has selected the tenant for this particular two bedroom unit on the basis of the number of occupants but that reading of the line is, in my view, a contortion and not in keeping with the general tenor of the Addendum, which is to ensure that the incomes of all occupants are considered to calculate a rent subsidy amount. Had the meaning been otherwise, it could easily have been expressed in simple language.

The fourth part of the Addendum deals with extended absences from the rental unit by the tenant and is not relevant to this dispute.

The tenant qualified for this subsidized rental unit in September 2016. The evidence presented at this hearing indicates that she continues to qualify for it. The BC Housing Application for Rent Subsidy the tenant signed at that time indicates that BC Housing may audit the information provided in the application at any time. It does not appear that BC Housing has done so. Indeed, if it did conduct a review of the tenant's subsidy, taking into account that two non-income earning children were no longer there, there is no information to indicate that the tenant would lose her entitlement to a rent subsidy, though perhaps the amount would be different, causing her to have to contribute a different amount to the rent.

The landlord wrote to the tenant on February 27, 2017 stating in order for the tenant to occupy a two bedroom unit the household must consist of more than just her. The letter states that "under the BC Housing Subsidy Guidelines" the tenant is considered overhoused and no longer qualifies for subsidy. This statement of fact has not been proved at this hearing. There is no evidence of BC Housing Subsidy Guidelines or that they show that this subsidized housing is related to the number of occupants.

The landlord is in the business of housing disadvantaged people and is doing so, no doubt, with challenging resources and a challenging clientele. It makes very good

sense that they attempt to use their resources to serve as many of the needy as possible. It is doubtful that anyone but the tenant will occupy this rental unit for the foreseeable future and that unit could and should be made available to house a larger family.

However, the ending of a tenancy is a serious matter. When it comes to ending this tenancy under s. 49.1 of the *Act*, the landlord must show under the law that the tenant has ceased to qualify for this subsidized rental unit under the law. It has not done so.

Conclusion

The tenant's application is allowed. The two month Notice to End Tenancy dated February 27, 2017 is cancelled. The landlord's application for an order of possession is dismissed.

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 30, 2017

Residential Tenancy Branch