



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ FF MT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy ("2 Month Notice") pursuant to section 49.1 of the *Act*;
- more time to dispute the landlord's Notice to End Tenancy pursuant to section 66 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing. The landlord was represented at the hearing by agents J.T. and D.F (the "landlord"). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy on April 5, 2018. Both parties confirmed receipt of each other's evidentiary packages.

Issue(s) to be Decided

Can the tenant cancel the landlord's 2 Month Notice to End Tenancy?

Should the tenant be granted more time to dispute the landlord's 2 Month Notice?

Can the tenant recover the filing fee from the landlord?

Background and Evidence

The landlord explained that the tenancy began on May 1, 2000. Rent is currently \$546.00 per month, and a security deposit of \$350.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said that a 2 Month Notice to End Tenancy (“2 Month Notice”) was issued to the tenant on April 5, 2018. The reason cited on the 2 Month Notice was listed as follows:

The tenant no longer qualifies for the subsidized rental unit

Testimony from the landlord described the rental unit in question as a subsidized home which required persons in occupation to qualify for the rental based on an agreed upon criteria. Specifically, the landlord said that to be eligible for the unit in question, persons must maintain 50% custody of their children. The landlord argued that the tenant no longer fulfilled this requirement, as she had not maintained 50% custody of her children since 2016.

The tenant did not dispute that she did not currently have 50% custody of her children, but argued that she had been a good tenant and said that she needed a place to house her kids when the custody issues with her former partner were resolved. The tenant said she had filed a court order looking to have access to her children every second weekend and said that if necessary, she would file a further court order seeking 50% custody.

As part of their evidentiary package, the landlord submitted a copy of the rental eligibility policy agreed to by the parties. At point 22 this policy states the following:

Applicants from RGI family housing must have at least one child. Applications for housing may be taken before the birth of a child, but the application will not be “active” until the child is born. Applicants with shared custody must have care and custody of the child(ren) at least 50% of the time.

Analysis

Section 49.1(2) of the *Act* states, “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.”

Section 49.1(1) of the *Act* defines a “subsidized rental unit” as a rental unit that is “operated by a public housing body, or on behalf of a public housing body, and occupied by a tenant who was required to demonstrate that the tenant 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.”

After considering the testimony and evidence of both parties I find it evident that the unit in question is to be characterized as a “subsidized rental unit” as per the definition provided in section 49.1(1) of the *Act*. Therefore, the question before is me whether or not the tenant fails to qualify for the subsidized rental unit.

The landlord presented undisputed testimony and evidence demonstrating that the unit in question required its occupant to maintain 50% custody of their children while in occupation of the unit. The tenant acknowledged during the hearing that she did not currently have 50% custody of her children but hoped to have access to her children every second weekend, and eventually to reach a 50% custody rate. While I have profound sympathy for the tenant and understand the very difficult position in which she finds herself, I must adhere to the requirements of the *Act*. I find that the 2 Month Notice issued to the tenant is valid and that the landlord has sufficiently shown that the tenant no longer qualifies for the subsidized rental unit. The tenant’s application to cancel the landlord’s 2 Month Notice is dismissed without leave to reapply.

As the tenant was unsuccessful in her application, she must bear the cost of her own filing fee.

~~Section 51 of the *Act* states, “A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.” If rent for June 2018 has been paid in full, the landlord is directed to provide the tenant with an amount that is equivalent of one month's rent payable under the tenancy agreement.~~

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

As the 2 Month Notice issued to the tenant was found to be valid, pursuant to section 55 of the *Act*, I must grant the landlord an Order of Possession. The landlord is therefore granted an Order of Possession valid at 1:00 P.M. on June 30, 2018.

The tenant has also applied for more time to dispute the notice to end tenancy. I find that this application is unnecessary as the landlord did not raise an objection to tenant's delay in applying for dispute resolution.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 P.M. on June 30, 2018. Should the tenant fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

The tenant's application for a return of the filing fee is dismissed.

The tenant's application for more time to dispute the notice to end tenancy 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: June 25, 2018

Residential Tenancy Branch

DECISION AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON JULY 26, 2018
AT THE PLACES INDICATED ON PAGES 1 & 3.