



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BURNABY LOUGHEED LIONS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

On July 31, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the "Notice") pursuant to Section 49.1 of the *Residential Tenancy Act* (the "*Act*").

The Tenant attended the hearing and C.R. attended the hearing as an agent for the Landlord. Both parties provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package and evidence by hand and C.R. confirmed that he received this. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package and evidence.

C.R. advised that he served the Tenant with his evidence by registered mail on August 27, 2018 and the Tenant confirmed receipt of this. As such, I accepted and considered all the evidence when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is

dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

All parties agreed that the tenancy started on September 1, 1998. Rent was currently established at a subsidized amount of \$748.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$450.00.

All parties agreed that the Landlord served the Notice by hand on July 30, 2018. The reason the Landlord served the Notice is because “The tenant no longer qualifies for the subsidized rental unit.” The Notice indicated that the effective end date of the Notice was September 29, 2018.

The Landlord stated that the Tenant qualified for a subsidy of the two-bedroom rental unit with his daughter. However, as his daughter no longer lives with him and his most current subsidy application is for himself only, he is over housed and no longer qualifies for the rental unit. The Landlord stated that he served a previous Notice to the Tenant in October 2017, but the Tenant could not find other accommodation, so the Landlord declined to enforce the Notice. The Landlord advised that the Tenant was offered another rental unit; however, the Tenant believed it was too small.

The Tenant stated that he went to BC Housing, where an agent advised him that he was still eligible for a subsidy. He acknowledged that he declined C.R.’s offer of a bachelor suite as it was too small. He stated that he was waiting to hear back from his daughter as she advised that she would like to move back into the rental unit.

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties, and the Landlord and the Tenant agreed as follows:

1. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit but must vacate the rental unit by **October 31, 2018 at 1:00 PM**.
2. The Tenant must still pay rent for October 2018.
3. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this Application.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

If condition one is not satisfactorily complied with, the Landlord is granted an Order of Possession effective at **1:00 PM on October 31, 2018 after service of this Order** on the Tenant.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

I have recorded the terms of the settlement in this decision. In recognition and support of the settlement agreement described above, and with agreement of both parties, I grant the Landlord a conditional Order of Possession, to serve and enforce upon the Tenant if necessary, effective at **1:00 PM on October 31, 2018**. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Landlord may file the Order with the Supreme Court of British Columbia and be enforced as an Order of that Court.

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: September 20, 2018

Residential Tenancy Branch