



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ISLAND COMMUNITY MENTAL HEALTH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on September 24, 2018. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 2 Month Notice to End Tenancy which was issued because *the Tenant Does Not Qualify for Subsidized Rental Unit* (The Notice)

Both sides were represented at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant received the 2 Month Notice to End Tenancy (*Tenant Does Not Qualify for Subsidized Rental Unit*) on July 30, 2018.

The Landlord stated that the Tenant has a history of misrepresenting his income on his annual application for rent subsidy with the Landlord. The Landlord stated that each year, the Tenant is required to submit a BC Housing Application for Rent Subsidy (The "Application"). The Landlord pointed out that in 2012, the Tenant was seen working by the Landlord and it was noted that the Tenant did not disclose this employment on his annual Application. The Landlord stated that following this, the Tenant was assessed several thousand dollars in back rent due to the subsidies he got but wasn't eligible for.

The Landlord stated that again in April of 2018, the Tenant was seen working as a security guard by the Landlord. The Landlord stated that this information did not coincide with what the Tenant put on his Application in February of 2018. The Application was provided into evidence. Under the "sources of income" portion of the form, it lists the Tenant's Old Age Security and Canada Pension Plan income as the only amounts for his "net income". Elsewhere on the form, the Landlord (agent of) wrote on the form that they were waiting for T4s because the Tenant's gross monthly income was lower than last year.

On the Application, it states that the Tenant signed and agreed to the following:

- *The information on the application was true, correct, and complete.*
- *If the applicant fails to disclose, or misrepresent any information requested by the Landlord to allow the Landlord to determine the applicable rent subsidy, that this will allow the Landlord to end the applicant's right to occupy the premises.*

[paraphrased from agreement]

The Application also includes a comprehensive section regarding what income needs to be declared, and what does not. It further states the following:

- All income from employment earnings, including commission and tips[...]

The Application further includes a section under "proof of income" which states the following:

- Acceptable proof of income includes: letters from employer with at least 3 consecutive pay stubs, letter from Employment and Assistance Worker or other proof of payment from the Ministry responsible for income assistance, written verification from WorkSafeBC, or other boards; copies of pension cheques,

statement of alimony, child support; for directly deposited amounts, copies of recent bank statements/books [...]

The Landlord stated that after they became aware that the Tenant had again misrepresented his sources of income on his application in February of 2018, they asked him for income verification sometime after they spotted him working in April 2018. The Landlord later received information showing that the Tenant had 3 sources of employment income in 2017 (3 different T4s). Since the Tenant failed to disclose his income as agreed upon, the Landlord stated the Tenant no longer qualifies for the subsidized rental housing. The Landlord stated that his incomplete and inaccurate application makes him ineligible for the subsidy, and ineligible for continuing his tenancy, as it undermines the program.

The Landlord notes that the Tenant never voluntarily disclosed his income, and only provided proof of his employment after he was seen working by the Landlord, and after he was asked by the Landlord to provide proof.

The Tenant stated that he is on a fixed pension and works part time as a security guard. The Tenant stated that this is an issue of semantics because he does not consider his work to be employment, since he is not employed full time. The Tenant acknowledges working part time as a security guard. The Tenant stated that when he applied for his annual rent subsidy in February of 2018, he did not have any of his T4s from last year. The Tenant stated he did not get these until April of 2018. The Tenant stated that because he did not have his T4s he did not put this income information in his Application.

The Tenant argues that even with all of his income sources included, he still qualifies for the subsidized rent in the housing complex. The Landlord stated that he is ineligible because of his failure to disclose his income, not because of earning too much to be admissible into subsidy program.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The Notice before me is issued pursuant to section 49.1 of the Act. Section 49.1 provides, in part:

Landlord's notice: tenant ceases to qualify for rental unit

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.

[my emphasis added]

I have considered the above sub-sections together in interpreting the Act to mean that if a tenant no longer meets one of the criteria that was considered in determining eligibility for the subsidized rental unit then the tenancy may be ended by the landlord under this section of the Act.

The Landlord stated that the Tenant is required to submit an annual Application as part of his tenancy. I note that the Tenant agreed to the following as part of his continued tenancy, and as part of his application for rent subsidy:

- *The information on the application was true, correct, and complete.*

- *If the applicant fails to disclose, or misrepresent any information requested by the Landlord to allow the Landlord to determine the applicable rent subsidy, that this will allow the Landlord to end the applicant's right to occupy the premises.*

I also note that the Tenant agreed that he would provide all sources of income. I note the Tenant only provided full particulars of his employment income once he was approached and after he was seen to be working. In any event, the Application filled out and signed by the Tenant clearly shows how to disclose and report sources of income.

Although the Tenant stated he had not received his T4s by the time he had to file his annual Application with the Landlord, I note the Application clearly lists other ways to demonstrate, substantiate and show what income is being earned so that an accurate and fair income supplement can be determined. I note this is a subsidized housing unit, and integral to this is the determination of need, which is why the Application lays out income specifics so clearly.

Even if the Tenant didn't have his T4s available, he could have provided bank statements or other information, as outlined on the Agreement, if his intent was to fully disclose his income. I find the Tenants failure to do so is a breach of his application for rent subsidy, and his eligibility to remain living at the rental unit, at a below market rate. It is unclear why the Tenant waited until the Landlord caught him working, and subsequently asked about this, before he offered complete information about his income.

After considering the totality of the information on this matter, I find the Landlord has sufficiently supported the reasons to issue the 2-month Notice. The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession.

Conclusion

The Tenant's application to cancel the Notice is dismissed.

The Landlord is granted an order of possession effective September 30, 2018, after service 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 25, 2018

Residential Tenancy Branch