Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPQ
Tenants: AS, CNQ, MT

Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the "Act").

The landlord's application for dispute resolution was made on August 23, 2018 (the "landlord's application"). The landlord applied for an order of possession for a Two Month Notice to End Tenancy for Cause – Tenant Does Not Qualify for Subsidized Rental Unit (the "Notice").

The tenants' application for dispute resolution was made on September 26, 2018 (the "tenants' application"). The tenants applied for the following relief, pursuant to the Act:

1. a request for more time to apply to cancel the Notice;
2. an order to cancel the Notice; and,
3. an order to allow assignment or sublet when permission unreasonably denied.

Two representatives for the landlord and both tenants attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of these applications are considered in my decision.

Issues

The issues that I must decide are the following:

1. Is the landlord entitled to an order of possession based on the Notice?
2. Are the tenants entitled to more time to apply to cancel the Notice?
3. If the tenants are entitled to more time, are the tenants entitled to an order cancelling the Notice?
4. And, are the tenants entitled to an order to allow assignment or sublet when permission unreasonably denied?

Background and Evidence

The landlord testified that a tenancy between the successor landlord and the tenants commenced on August 1, 2014 and continues to the present day. The rental unit is a two-bedroom suite and is provided to the tenants on a subsidized basis on the condition that the rental unit is occupied by at least one adult and one child.

A written tenancy agreement ("the Agreement"), which was submitted into evidence, includes the names of the two tenants, along with the names of two children (a 9 year old boy and a 13 year old girl, as they are now).

The section in which the names are listed reads as follows: "Occupants (other than tenants named above). List all other persons (including those under age 19) who will occupy the residential premises."

Section 12 of the Agreement is titled "Occupants" and subsection 12(c) reads:

> Any change in the tenant's household composition and household income is material and may result in the tenant no longer satisfying the landlord's eligibility criteria for the rental unit and, in such event, the landlord may serve a notice to end the tenancy.

The landlord further testified that there have not been any children in the rental unit since November 2017 and have made repeated attempts to find out from the tenants when the tenants' children (one of whom is in the custody of the MCFD and the other who lives almost exclusively with her father, and visits occasionally) are returning. The

tenants have not provided the landlord with a satisfactory response to the situation regarding the potential return of the children.

On July 31, 2018, the landlord's agent S.B. served the tenant I.L., in person, with the Notice. The Notice, submitted into evidence by the landlord, on page 2, indicates that the reason for the Notice being issued is that "The tenant no longer qualifies for the subsidized rental unit."

The tenant D.M. testified that I.L.'s young daughter is in the shared custody of her father, and that the young boy was taken away by the MCFD. He testified that he is waiting to get into rehab and that tenant I.L. is due to start a 3-month (I.L. later corrected this to 60 days) treatment program commencing October 15, 2018. Once the two have completed rehab treatment, then there may be a chance that the young boy is returned to their care. There are also related court proceedings underway in respect of the care and custody of the children.

He commented that having stable housing is one of the criteria that will be required for the boy to be potentially returned. He further commented that what it is they were seeking was an extension of time to remain in the rental unit.

Tenant I.L. testified that her memory is not the best due to an anxiety disorder, and that she would do her best to recall the matters pertaining to the situation. The situation is getting "worse and worse." She noted that due to problems they were having with the ministry, that the one child (the boy) was taken away permanently. She expressed concern about finding the entire situation involving the Notice to be confusing.

She was quite confused about the landlord's involvement and noted that the Notice came as a big surprise, and that there is clearly a misunderstanding. She further testified that she knew that she was supposed to let the landlord know about the matter involving the children.

Regarding the Notice, she testified that she does not remember receiving the Notice. And, that she believed she signed a "new lease agreement" that would, in her mind, effectively set aside the latest Notice. She admitted that she all of this to be "very, very confusing paperwork."

In respect of the children, apart from the boy who is in the custody of MCFD, the daughter is being taken care of by her father (who does not reside with the tenants) and

that the daughter comes and goes as she pleases. She visits about once a week, but the tenant does not believe that with everything going on (e.g., the rehab treatment) it is not best to have any children around.

Responding to the tenant's testimony, the landlord clarified that the tenant had signed an internal transfer form, which would put the tenants or tenant on a waiting list in order to qualify for a one-bedroom rental unit. The landlord noted that the tenant had not yet come and seen her about this transfer form, and that she (the tenant) should do so after the hearing.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The parties did not dispute whether the rental unit is a "subsidized rental unit" as defined in section 49.1(1) of the Act. As such, I find that the rental unit is a subsidized rental unit for the purposes of the landlord's and tenants' applications.

Section 49.1(2) of the Act states that a landlord may end a tenancy of a subsidized rental unit by giving notice. Further, sections 49.1(5) and (6) of the Act state that

> (5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.
>
> (6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant
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> > (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
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> > (b) must vacate the rental unit by that date.

In this case, the landlord served, and the tenant received, the Notice on July 31, 2018. The tenant did not dispute that she received the Notice on this date, but rather, does not remember receiving it. She admitted that her memory is not the best, and that she found the whole thing very, very confusing. While her memory may not be the best due to an

anxiety disorder, I find that the landlord served the Notice on the tenant, in-person, on July 31, 2018, in compliance with the section 88(a) of the Act.

The tenants did not apply for dispute resolution until September 26, 2018, almost two months after the Notice was issued, and well beyond the 15 days permitted under section 49.1. As such, I find that the tenants have conclusively presumed to have accepted that the tenancy ended on September 30, 2018.

The tenants applied to request more time to cancel the Notice.

Section 66(1) of the Act states that I may extend a time limit only in exceptional circumstances. I find that the tenant's memory issues do not constitute "exceptional circumstances." Moreover, I find that the tenant's assertions that she thought the whole thing was put to rest by her signing a "new lease agreement" suggests that she was fully aware of the Notice but chose not to apply within the required time.

As such, I dismiss the tenants' application for additional time in which to dispute the Notice without leave to reapply. Therefore, I dismiss their application for an order to cancel the Notice.

Further, the tenants did not provide any oral or documentary evidence pertaining to their seeking of an order to allow assignment or sublet, and as such I dismiss that aspect of their claim.

Section 55 (1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

Section 52 of the Act requires that any notice to end tenancy issued by a landlord must (1) be signed and dated by the landlord, (2) give the address of the rental unit, (3) state the effective date of the notice, (4) state the grounds for ending the tenancy, and (5) be in the approved form.

I find the Notice issued by the landlord on July 30, 2018, complies with the requirements set out in Section 52. As such, I grant the landlord an order of possession of the rental unit.

Conclusion

I dismiss the tenants' application in its entirety, without leave to reapply.

I grant the landlord an order of possession. This order must be served on the tenants and is effective two days after service on the tenants. This order may be filed in, 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 Act.

Dated: October 12, 2018

Residential Tenancy Branch