



Dispute Resolution Services

Page: 1

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, OLC, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the 2 Month Notice) pursuant to section 49.1;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the commencement of the hearing, I noted that the landlord had provided written evidence requesting that the Association named above be added as a Respondent to the tenants' application as the Association noted that the individual named as the Respondent was the manager of this property and not the sole landlord. Although the individual named as manager qualifies as a landlord under the definition of the *Act*, this individual issued the 2 Month Notice in his capacity as a representative of the Association, identified as the landlord in the 2 Month Notice. With the agreement of the parties, I added the Association as a second Respondent to the tenants' application.

As Tenant RVC (the tenant) confirmed that they received the 2 Month Notice sent by the landlord by registered mail on September 6, 2018, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package on September 14, 2018, sent by the tenants by registered mail on September 13, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received a copy of the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

The tenants' assistant testified that they included a copy of the tenants' written evidence to the landlord with the dispute resolution hearing package. The landlord testified that there was no written evidence included with the hearing package, and said that no written evidence of any type was provided to the landlord with respect to this hearing. The landlord testified that the dispute resolution hearing package stated that no written evidence was included with that package. The tenants' assistant said that they must have made a mistake in failing to include the written evidence to the landlord. I noted that much of the tenants' written evidence provided to the Residential Tenancy Branch was income information, included with the landlord's written evidence. I noted that there was only one additional page describing each of the payments made to Tenant JDUV (the tenant's son) that was not included in the landlord's written evidence. As no written evidence was provided by the tenants to the landlord, I advised the parties that I would be unable to consider the one page from Tenant JDUV that was not included in the landlord's own written evidence package.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any other orders be issued with respect to this tenancy? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy for a subsidized rental unit operated by the Association on the basis of an agreement with BC Housing began on August 1, 2017. According to the terms of the Residential Tenancy Agreement (the Agreement) signed by the parties on July 25, 2017, the monthly rent was set at \$1,900.00, payable in advance by the first of each month. The landlord continues to hold the tenants' \$450.00 security deposit paid on July 25, 2017. For the first year of their tenancy, the tenants were responsible for paying a subsidized monthly rent of \$962.00, an amount calculated as a percentage of their income at that time.

As per the terms of their Agreement and the addendum attached to that Agreement, the tenants were responsible for providing the landlord with records of their income and assets on an annual basis. This information is used to calculate the amount, if any, of their eligible rent subsidy each year.

The landlord issued the 2 Month Notice because the combined income of the household, including the two tenants, increased beyond the level by which they could obtain a subsidy to their monthly rent according to the formula developed by BC Housing, and as set out in the Addendum to the Agreement. According to the calculations provided to the tenants in the landlord's September 6, 2018 letter, the tenants' income warranted a monthly rent of \$2,289.00, instead of the \$962.00, they had been paying. The landlord testified that the tenants' income situation appears to have changed in May 2018, when Tenant JDUV took a job that increased the family income considerably. The landlord said that the tenants did not comply with the requirement that they alert the landlord immediately of any change to their income when this

occurred. Tenant JDUV said that he was unaware of the need to provide this update to the landlord when he took a job over the summer months from May until September 2018.

The tenants said that Tenant JDUV has returned to school as of early September 2018. Although Tenant JDUV planned to take four classes this semester, he testified that he could only take two classes because those that he wished to take were already filled by the time he tried to enroll in them. Tenant JDUV said that he plans to take four classes in January 2019. The landlord said that Tenant JDUV is enrolled part-time in school and provided undisputed testimony that Tenant JDUV is still working.

Analysis

Section 49.1 of the *Act* outlines the provisions whereby a landlord may end a tenancy because the tenant(s) no longer qualify for a subsidized rental unit. This section reads in part as follows:

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...

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

All parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on December 31, 2018, by which time the tenants will have surrendered vacant possession of the rental unit to the landlord.
2. The landlord agreed that for the remaining two months of this tenancy, the monthly rent will remain at \$962.00.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenants' application and all issues currently in dispute arising out of this tenancy at this time and that they did so of their own free will and without any element of force or coercion.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenants do not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with an Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To implement this settlement agreement, I order that the monthly rent for the remaining months of this tenancy continue at \$962.00.

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: October 25, 2018

Residential Tenancy Branch