



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RED DOOR HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee..

The Tenant's agent said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on May 17, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on April 1, 2013 as a month to month tenancy. Market rent is \$1,050.00 and the Tenant pays a subsidized rent of \$421.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$525.00 on March 26, 2013.

The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated May 7, 2019. She served the Notice on May 7, 2019 by post the Notice on the door of the Tenant's rental unit. The Effective Vacancy Date on the Notice is May 21, 2019. The Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say that the Tenant has unpaid rent of \$1,574.00 which is the result of additional occupants in the rental unit. The additional occupants in the rental unit adjusted the Tenant's portion of the rent from \$263.00 per month to \$420.00 from June 1, 2018 to November 30, 2018 and from \$263.00 to \$421.00 from December 1 2018 to May 1, 2019. The Landlord said the Tenant has not paid the adjustment to the rent in the amount of \$1,574.00. Further the Landlord said the adjusted rental amount was only calculated in March 2019 because the Tenant did not provide the necessary documentation prior to March 2019. The Landlord said they wrote the Tenant a letter dated April 9, 2019 to make arrangements for the arrears, but the Tenant did not respond. Consequently, the Landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent on May 7, 2019. The Landlord requested an Order of Possession for July 31, 2019 if the Tenant's application is unsuccessful.

The Tenant's agent said that the Tenant understood there was an adjustment to her rent subsidy, but the Landlord did not provide the details of what it was for and how it was calculated. Therefore, the Tenant did not pay the rent arrears in the amount on the 10 Day Notice to End Tenancy for Unpaid Rent dated May 7, 2019. The Tenant's agent believes the Landlord has changed documents to show the rent adjustment calculations, because the Tenant's agent said the Tenant has not been given these documents prior to the application. The Tenant's agent continued to say the Landlord has an obligation to meet with the Tenant and make payment terms on any rent adjustments. The Tenant's agent said the Landlord has not done this.

The Tenant's agent continued to say that because the Landlord did not explain the rent adjustment to the Tenant and the Landlord did not give the Tenant the opportunity to make a payment arrangement on the rent arrears the 10 Day Notice to End Tenancy for Unpaid Rent is not valid and should be cancelled. As well the Tenant's agent said she does not believe an adjustment to the subsidy is actually rent and therefore should not be include as rent arrears.

The Landlord said the Tenant acknowledge the rent adjustment in her letter of June 19 2018 where the Tenant said she would start paying the arrears dating back to April 2018. As well the Landlord said their letter dated April 9, 2019 indicates the Tenant can contact the Landlord to make payment arrangements. The Landlord said they have been patience and have tried to work with the Tenant, but the Tenant has not cooperated. The Landlord said they want to end the tenancy.

The Tenant's agent said in closing the Tenant would like a review of the rent adjustment and when the Tenant understands the rent adjustment she will pay the amount or make arrangements to make payments. The Tenant's agent said the 10 Day Notice to End Tenancy for Unpaid Rent should be cancelled because the Tenant was not informed correctly about the rent adjustment.

The Landlord said in closing they have tried to work with the Tenant, but she is uncooperative and the Tenant's agent has slandered the Landlord so they want to end the tenancy. The Landlord requested an Order of Possession for July 31, 2019.

Analysis

In situation where there is a rent subsidy there are policies of the party providing the subsidy and then there is the Residential Tenancy Act. The rules and policies of each of these agencies should be kept separate. The Residential Tenancy Act does not set or determine subsidy amounts or how they are calculated. The Act governs tenancy agreements. One of the key elements of a tenancy is to pay the rent in full and on time. The rent in this situation is the market rent in the amount of \$1,050.00. This is the amount to be paid each month. How it is paid is between the tenant and the rent subsidy provider. In this situation there was a change to the rental subsidy of approximately \$157.00 per month for 10 months. The subsidy decreased therefore the Tenant's rent increase and the Tenant did not pay the increase. Further the Landlord did not request this amount until the calculation were completed in March 2019. When the Tenant did not pay the arrears resulting from the rent adjustment the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. I accept the rent adjustment is rent and I find from the evidence and testimony of both the Landlord and the Tenant's agent the rent adjustment arrears have not been paid.

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated May 7, 2019 stands in effect. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect July 31, 2019 after service of it on the Tenant.

With regard to the Tenant's claim the Landlord has not complied with the Act, regulations and tenancy agreement, I find the Tenant has not established grounds to prove the Landlord has not comply with the Act, regulations and tenancy agreement. I dismiss this claim without leave to reapply.

As the Tenant has not been successful in this matter I order the Tenant to bear the cost of the filing fee of \$100.00 which is already paid.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective July 31, 2019 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in 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 *Residential Tenancy Act*.

Dated: June 25, 2019

Residential Tenancy Branch