



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, RP, RR, FFT

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify For A Subsidized Rental Unit (the "Notice"), an order allowing a reduction in rent, an order requiring the landlord to make repairs to the rental unit, and for recovery of the filing fee paid for this application.

At the outset of the hearing, as I had questions about the validity of the Notice from my review of the evidence, the parties were questioned about the said Notice. I will refer to those responses later in this decision.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

I have determined that the portion of the tenant's application dealing with a request for an order for repairs to the rental unit and for a reduction in monthly rent is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion, **with leave to reapply**.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to recover her filing fee?

Background and Evidence

The tenant submitted without dispute that she lived in the rental unit at the time the landlord purchased the property and her tenancy continued. The written tenancy agreement entered into evidence by the tenant shows that this tenancy began on December 1, 2017, and that her monthly rent is \$725.00.

The Notice, entered into evidence by the tenant, was dated May 1, 2019, and listed an effective end of tenancy date of July 15, 2019. The landlord stated that he hand delivered the Notice to the tenant on May 3, 2019. The Notice was issued pursuant to section 49.1 of the Act as the landlord has claimed that the tenant no longer qualifies for subsidized housing.

The tenant agreed that she received the Notice on May 3, 2019, and it is noted that her application in dispute of the Notice was filed on May 13, 2019, within the 15 days after service allowed by the Act to dispute the Notice.

In response to my inquiry, the tenant said she pays her rent in cash and receives a receipt, and that no portion of her rent is paid by government subsidy.

The landlord confirmed that he receives the monthly rent from the tenant and does not receive any portion of the monthly rent by government subsidy.

Analysis

Under 49.1(1) of the Act, the section of the Act in which the landlord's Notice was issued, a public housing body is a prescribed person or organization and the subsidized rental unit is operated by the public housing body or on behalf of that body, and is occupied by a tenant who has met the eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement. Subsection (2) stipulates that 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.

In this case, the undisputed evidence is that this tenancy was not the subject of a subsidized rental unit as the tenant paid her full monthly rent from her funds.

Therefore, I find the tenancy cannot end by this Notice. As a result, I find the landlord's Notice, dated May 1, 2019, for an effective move out date of July 15, 2019, is not valid and not supported by the evidence, and therefore has no force and effect. I order that

the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

I allow the tenant recovery of her filing fee of \$100.00. I grant her a one-time rent reduction of \$100.00 from her next or a future month's rent payment in satisfaction of her monetary award, notifying the landlord of when this deduction is being made. The landlord may not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the tenant has made this deduction of \$100.00.

Conclusion

The tenant's application seeking cancellation of the Notice is granted as I have cancelled the Notice.

The tenant is awarded recovery of her filing fee and is authorized to make a one-time reduction of \$100.00 in her monthly rent.

The portion of the tenant's application not dealing specifically with her request to cancel the Notice, as noted above, is dismissed, with leave to reapply.

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 18, 2019

Residential Tenancy Branch