



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAMELE'AWT QWEESOME HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with the tenant's 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 the Subsidized Rental Unit ("2 Month Notice") pursuant to section 49.

The landlord's agent CE ("landlord") testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated May 23, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on March 1, 2019. The tenant's monthly rent is set at \$1,150.00, payable on the first of the month. The tenant pays \$680.00, which is her portion after her subsidy.

On May 23, 2019 the landlord issued the 2 Month Notice for the following reason:

- The tenant no longer qualifies for the subsidized rental unit.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord testified that the tenant had originally qualified for this subsidized housing unit after she was screened by the landlord to determine her eligibility. The screening process includes an interview with the prospective tenant about her situation. The tenant was asked about her partner, and the tenant replied that he would not be residing with her at this residence. The tenancy agreement was drafted, and the tenant was accepted on the basis that she would be the sole tenant. Changes can be made after a request is made and approved, and only if the landlord determines that this change does not change the tenant's eligibility.

The landlord believes that the tenant's partner resides with her in this rental unit, and as the tenant's partner is not approved to reside there, the landlord is requesting the termination of this tenancy as the tenant no longer qualifies for the subsidized housing. The landlord testified that on May 2, 2019 the landlord had requested the tenant provide evidence to support that her partner was not residing there with her. On May 6, 2019 the tenant replied that she was unable to produce a tenancy agreement for her partner's residence. The tenant was able to obtain and produce rent receipts, but the landlord felt that the receipts were not "official" and therefore determined that these receipts do not sufficiently support that the tenant's partner has a primary residence elsewhere. The landlord inquired about who the partner's landlord was, and a name was provided. Upon investigation, the landlord had discovered through social media that the partner's landlord was in fact a friend of the tenant's and her partner. The landlord testified that this was further corroborated with photos posted of the three parties taken at this rental address. The landlord determined the "logical conclusion" that one may make is that the tenant has not been truthful in her disclosure.

The landlord provided further evidence in the form of statements by several witnesses, including the landlord's agent, who had personally observed the tenant's partner entering and exiting the building often, using the tenant's FOB without her present, and frequenting the smoking area.

The tenant testified in the hearing that she had provided confirmation to support that her partner does indeed have a primary residence elsewhere. The tenant submitted copies

of rent receipts as well as a letter addressed to her partner from a government agency to an address where the tenant testified her partner resides. The tenant testified that there was a delay in providing a copy of the letter to the landlord as it had arrived later. The tenant testified that she was the recipient of a liver transplant and requires assistance with daily household chores, which her partner assists her with such as washing the bathtub, and taking out the garbage.

Analysis

Subsection 49.1(2) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if:

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.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed her application on May 29, 2019, 5 days after receiving the 2 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

I have considered the testimony and evidentiary materials submitted for this hearing. I am not satisfied that the landlord had provided sufficient evidence to support that the tenant has allowed an additional occupant to reside with her. Although there is undisputed evidence that the tenant's partner has been observed entering and exiting the tenant's rental unit with her FOB, and in her absence, the tenant had provided a reasonable explanation for why her partner was frequently there. I accept the sworn testimony of the tenant that her partner has to attend her residence often to assist her with her daily life. Although the landlord disputes the credibility of the tenant's testimony and evidence, I find that the tenant had provided more than one form of evidence to support that her partner has a primary residence elsewhere. In light of the conflicting testimony and evidence, I find that the landlord had not met the burden of proof required for me to terminate the tenancy on the grounds provided on the 2 Month Notice.

The landlord's 2 Month Notice, dated May 23, 2019, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 23, 2019 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: July 16, 2019

Residential Tenancy Branch