



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASK WELLNESS SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

On July 2, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated June 25, 2019, (“the One Month Notice”).

The matter was set for a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties confirmed that they have exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

Background and Evidence

Both parties testified that the tenancy began on August 2012, and is on a month to month basis. Rent is geared to income. Subsidized rent in the amount of \$478.00 is due by the first day of each month. The Tenant paid the Landlord a security deposit of \$300.00.

The Landlord and Tenant provided a copy of the tenancy agreement. The tenancy agreement contains a term regarding the eligibility for Rent Supplement (subsidy). The term provides:

For the purpose of setting the amount of the Tenant Rent Contribution and the amount of the rent supplement or subsidy, if any, the tenant agrees to declare, annually at a time the Landlord determines, the income and assets of all residents in the rental unit who are 19 years and older, and to provide proof of such income and assets in a form that the Landlord requires.

The requirement to declare and document income is a fundamental and material part of this tenancy agreement. If the Tenant:

- i. fails to provide the above mentioned declaration and proof of income;*
- ii. misrepresents or conceals any information requested by the Landlord; or*
- iii. becomes ineligible for the rent supplement or subsidy for any reason;*

The tenant will immediately be required to pay the full rent amount for the rental unit and the Landlord may end the tenancy.

Both parties agreed that the tenancy agreement provides that rent will be determined to be 30% of the Tenants income.

The Landlord served the One Month Notice to the Tenant on June 25, 2019, by posting the Notice to the Tenant's door.

The Landlord selected the following reason for ending the tenancy within the One Month Notice:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Within the One Month Notice, the details of cause are as follows:

The tenant lives in subsidized housing. The tenant is to provide proof of income and assets yearly to determine ongoing entitlement to rent geared to income housing. Although provided with ample opportunity to do so, the tenant has failed to provide copies of 90 days of bank/ financial investment account statement reflecting all deposits. This is a material term of the tenancy agreement. The tenant is in breach of a material term of the tenancy agreement.

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after

receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. The Tenant disputed the one Month Notice on July 2, 2019, within the required time frame.

The Landlord testified that BC Housing owns the rental property. The Landlord testified that that each year the occupants of the rental property are sent a letter explaining what income information will be required so they can be prepared to submit the information. The Landlord testified that all the occupants are required to provide the same type of documentation of income and assets in order for the Landlord to determine subsidy eligibility.

The Landlord testified that occupants must provide proof of income and a 90 day bank statement.

The Landlord testified that the Tenant has provided his proof of income from the Canada Pension Plan and Old Age Security but has not provided the required banking information.

The Landlord testified that the Tenant has provided the banking information in the past; however, he has refused to provide the banking information for 2018 and 2019.

The Landlord testified that BC Housing waived the requirement for the Tenant to provide the information for the 2018 year; however, the Tenant was informed that he must provide the information for 2019. The Landlord referred to a letter dated August 27, 2018, sent to the Tenant reminding him of the requirements to provide proof of income. The letter included a guide that explains that occupants on a pension must provide three months consecutive complete and current bank statements for all accounts. The Letter also informed the Tenant that a bank statement with information edited out is not allowed.

The Landlord testified that paragraph 9 of the tenancy agreement requires the Tenant to provide the information requested by the Landlord and sets out that the requirement to declare and document income is a fundamental and material part of the tenancy agreement.

The Landlord also pointed out that the Tenant signed a tenancy agreement checklist where he indicated that he understood what he must do each year to receive a rent subsidy. The Landlord provided a copy of the checklist.

The Landlord received a letter from the Tenant dated April 8, 2019, where the Tenant takes the position that the Landlord's requests for 90 days of bank/ financial investment account statements and 2018 tax assessment documents are a violation of the Personal Information Protection Act and the Privacy Commission has stated to not release this information. The Tenant provided the Landlord with a letter from Service Canada outlining his total income and a statement from his bank indicating he has a valid, active account. The Tenant informs the Landlord that no additional information will be supplied.

The Landlord sent the Tenant a letter dated May 28, 2019, explaining the rent subsidy eligibility requirements within the tenancy agreement and reminding the Tenant that the requirement to provide the information is a fundamental and material part of the agreement. The letter explains that the Personal Information and Protection Act recognizes that it is reasonable for the Landlord to collect personal information about proof of income and reassures the Tenant that his information will be treated as highly confidential. The letter explains that BC Housing policy states that residents cannot black out any information regarding deposits, cash withdrawals, and transfers. The letter informs the Tenant that the information he has provided is incomplete and requests full financial disclosure no later than June 10, 2019. The letter explains that failure to provide the information will result in the Landlord seeking to end the tenancy.

The Landlord testified that the Tenant did not provide the required financial information and therefore he has fundamentally breached the tenancy agreement. The Landlord is seeking to end the tenancy and get an order of possession for the rental unit.

In response to the Landlord's testimony, the Tenant testified that in years past he provided the Landlord with a letter from Service Canada and bank statements showing his balance.

The Tenant testified that he provided the Landlord with a 30 day print out of his banking record where he blacked out withdrawals and deposits. The Tenant testified that he does not want some deposits to be considered to be income. The Tenant explained that he sold some of his personal items, which is not regular income. When asked whether he provided an explanation to the Landlord as to why he blacked out the items, he replied that he did not provide the Landlord an explanation. The Tenant testified that he does not believe that the Landlord is entitled to the information.

The Tenant testified that he is operating under the advice of the Privacy Commission. When the Tenant was asked whether he provided the privacy commission with a copy of the tenancy agreement to review, he replied that he did not provide them with a copy.

The Tenant then testified that the Eligibility for Rent Supplement terms of the tenancy agreement do not apply to him. He testified that this term was blacked out on his copy of the tenancy agreement. The Tenant provided a copy of the tenancy agreement.

In response, the Landlord testified that Eligibility for Rent Supplement terms of the tenancy agreement do apply to the Tenant. The Landlord submitted that if any terms did not apply, there would have been initials next to them. The Landlord submitted that the Tenant previously provided the required financial information and signed the checklist indicating that he understood what he must do each year to receive a rent subsidy.

Analysis

Section 47 (1)(h) of the Act provides that a Landlord may end a tenancy by giving a One Month Notice to end the tenancy if the Tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time.

Section 49.1 of the Act provides that a Landlord may end the tenancy of a subsidized rental unit by giving a Two Month Notice to end the tenancy if the Tenant or other occupant ceases to qualify for the rental unit.

A public housing body means a prescribed person or organization. A subsidized rental unit means a rental unit that is operated by a public housing body, or on behalf of a public housing body, and 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.

Section 3.1 of the Residential Tenancy Regulation provides that the following organizations are public housing bodies and in accordance with section 2 of the Regulation are exempt from the requirements of sections 34(2), 41, 42 and 43 of the Act which pertain to subletting and rent increases.

- (a) the British Columbia Housing Management Commission;
- (b) the Canada Mortgage and Housing Corporation;
- (c) the City of Vancouver;
- (d) the City of Vancouver Public Housing Corporation;

- (e) Metro Vancouver Housing Corporation;
- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
 - (i) the government of British Columbia;
 - (ii) the British Columbia Housing Management Commission;
 - (iii) the Canada Mortgage and Housing Corporation.

In the matter before me, the Landlord has the onus to prove that the reason for ending the tenancy is valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

I find that the Landlord is public housing body and operates subsidized rental units.

With respect to the Tenants suggestion that the Eligibility for Rent Supplement term of the tenancy agreement does not apply to him, I find that it is more likely than not that the Tenant is mistaken. I have reviewed the copy provided by the Tenant and compared it to the copy provided by the Landlord. I find that the term is not blacked out, but was highlighted and photocopied which makes it appear to be blacked out. I find that the text is barely readable on the Tenant's copy. I find that the darkened areas of text on the Tenant's copy match perfectly with the highlighted areas of the Landlords' copy. In addition, I find that the Tenant previously provided the required financial information and there is no mention that the Tenant previously took the position that the term did not apply to him. I also note that the Tenant agreed that his rent is geared to income. To accept the Tenant's position that the term of the agreement does not apply, I would have to accept that the Tenant does not have to provide any documentation to prove income to the Landlord. I find that the Tenants suggestion that the term does not apply to him is not convincing. I find that the tenancy agreement, including the Eligibility for Rent Supplement term of the tenancy agreement applies to the Tenant.

I have reviewed the tenancy agreement and I find that for the purpose of determining the rent subsidy, the Tenant agreed to declare annually at a time the Landlord determines, the income and assets of all residents in the rental unit who are 19 years and older, and to provide proof of such income and assets in a form that the Landlord requires. I find that the requirement to declare and document income is a fundamental and material term of the tenancy agreement. I find that the tenancy agreement provides that if the Tenant fails to provide the proof of income or misrepresents or conceals any information requested by the Landlord, the Landlord may end the tenancy.

I have considered whether or not the Tenant has breached a fundamental term of the tenancy agreement by failing to provide proof of income or concealing information. I find that the Tenant is refusing to provide the banking information requested by the Landlord. The Tenant only provided 30 days of information and blacked out withdrawal and deposit transactions.

I find that the Tenant was reminded of his obligations under the tenancy agreement and the Tenant responded to the Landlord that no additional information will be supplied. I find that the Tenant was provided with a breach letter dated May 28, 2019, and was given an opportunity to comply with the term of the tenancy agreement, but the Tenant failed to do so.

I have considered the Tenant's reason for refusing to provide the information. I am not persuaded that the Tenant has a legal right to withhold the information. The Tenant takes the position that the Landlord is not entitled to the information; however, the Tenant did not have the tenancy agreement reviewed by the Privacy Commission. It appears to me that the Tenant does not want to disclose bank transactions to the Landlord out of a concern that they will be considered income.

I find that the Tenant has breached a material term of the tenancy agreement by failing to provide financial information to the Landlord, and the Tenant did not correct the breach within a reasonable time after written notice to do so.

Since I find that the Tenant has breached a material term of the tenancy agreement I find that the Landlord cannot determine the Tenants eligibility for the rental unit. The Landlord correctly issued a One Month Notice to End Tenancy for Cause for a breach of a material term of the tenancy agreement under section 47 of the Act.

The Tenant's application to cancel the One Month Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession for the rental unit.

The Landlord is granted an order of possession effective no later than 1:00 pm on August 31, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

I find that the Tenant has breached a material term of the tenancy agreement by failing to provide financial information to the Landlord, and the Tenant did not correct the breach within a reasonable time after written notice to do so.

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated June 25, 2019, is dismissed.

The Landlord is granted an order of possession effective no later than 1:00 pm on August 31, 2019, after service on the Tenant.

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: August 14, 2019

Residential Tenancy Branch