



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Chelsea Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPQ

Introduction

This hearing was convened in response to an application by the Landlord for an order of possession pursuant to section 55 of the *Residential Tenancy Act* (the "Act").

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant's Agent asks for an adjournment as the Agent just offered last week to assist the Tenant with the hearing. The Agent confirms that the Tenant did not dispute the notice to end tenancy. The Landlord states that they do not agree to an adjournment as they have a waiting list for the unit and do not wish to waste any more time.

Rule 7.8 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that the arbitrator will determine whether the circumstances warrant an adjournment. Criteria that may be considered is whether the adjournment will result in a resolution of the matter or is required to provide a fair opportunity for a party to be heard. As the Tenant did not dispute the notice to end tenancy I consider that an adjournment would not make any difference to the outcome of the Landlord's claim for an order of possession. Given the presence of the Tenant's agent and as there are no submissions that the Tenant could not attend the hearing for any reason I also consider that the Tenant has been given a fair opportunity to be heard. Given the Landlord's evidence of a high need for the unit I find that, in the circumstances, an adjournment is not warranted. The hearing continues.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Background and Evidence

The Tenant states that the tenancy started on January 1, 2016 as set out on the tenancy agreement. The Landlord states that they took over the rentals after the tenancy started and that according to their computer records the tenancy started on October 1, 2015. The Parties agree that subsidized rent of \$510.00 is payable on the first day of each month.

The Landlord states that the Tenant was served by registered mail on May 31, 2019 with a two month notice to end tenancy because the tenant does not qualify for a subsidized unit (the "Notice"). The Tenant agrees that the Tenant received the Notice sometime in June 2019. The Tenant agrees that the Notice is signed and dated by the Landlord, sets out the rental unit address, sets out an effective date of August 31, 2019, is on an RTB form and states that the reason for the Notice is that the Tenant no longer qualifies for the rental unit. The Tenant confirms that the Notice was not disputed.

The Landlord states that the Tenant no longer qualifies for the unit as the Tenant has not provided its yearly annual income statement for the past two years and that the Tenant is residing alone in a unit that was approved for the Tenant and its children. The Landlord states that the Tenant is "over housed" and no longer qualifies for the rental unit. The Landlord states that the tenancy agreement provides that the tenancy will end if the Tenant does not qualify for the unit. The Landlord states that the Tenant has paid rent for September 2019 and asks for an order of possession to be effective September 30, 2019.

Analysis

Section 49.1(2) of the Act provides 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. Given the Landlord's undisputed evidence that the tenancy agreement provides that the Landlord may end the tenancy if the Tenant does not qualify for the rental unit and that the Tenant no longer qualifies for the unit, I find that the Landlord is entitled to end the tenancy.

Section 49.1(6) of the Act provides that if a tenant who has received a notice under this section does not make an application for dispute resolution within 15 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. Section 55(2) of the Act provides that A landlord may request an order of possession of a rental unit where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Based on the undisputed evidence that the Tenant did not dispute the Notice, as the effective date of the Notice has elapsed, and as the Landlord has claimed an order of possession, I find that the Tenant must move out of the unit and that the Landlord is entitled to an order of possession effective 1:00 p.m. on September 30, 2019.

Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on September 30, 2019.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: September 05, 2019

Residential Tenancy Branch