



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COQUITLAM KINSMEN HOUSING ESTATES /
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNQ

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for more time to apply for dispute resolution, and to cancel a Two Month Notice to End Tenancy because the Tenant does not Qualify for Subsidized Rental Unit dated May 13, 2019 ("Two Month Notice").

The Tenant and four agents for the Landlord, D.B, J.J., S.D., and T.W. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Tenant entitled to More Time to Apply for Dispute Resolution?
- Is the Two Month Notice valid or should it be cancelled?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 1995, with a monthly rent of \$199.00, which is now \$276.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$200.00, and no pet damage deposit.

The Two Month Notice is signed and dated by the Agent, gives the grounds for issuing the eviction notice, the rental unit address, and is in the approved form.

The Landlord submitted a Proof of Service form indicating that the Landlord served the Tenant with the Two Month Notice by posting it on the rental unit door on May 13, 2019. The effective vacancy date on the Two Month Notice was July 31, 2019.

The Tenant applied for dispute resolution to dispute the validity of the Two Month Notice on July 31, 2019. The Landlord allowed the Tenant two extensions to the deadline, taking rent payment from her for August and September, with both receipts saying: "for use and occupancy only". The Tenant was still living in the rental unit as of the October 3, 2019 hearing.

More Time to Apply for Dispute Resolution

The Tenant acknowledged that she was late applying for dispute resolution to dispute the Two Month Notice. She said she looked at the Two Month Notice, noting that it said she had 15 days to apply to dispute the Two Month Notice. The Tenant said she called the RTB for more information. She said the RTB representative asked about her situation and told her that she did not have any grounds to dispute the Two Month Notice, so she said she accepted that and did not apply. However, the Tenant said she looked for help with her situation, calling her MLA's office and was told that they deal with her situation a lot. The Tenant said they told her not to worry, that they know the President of the Landlord's Board of Directors. She said they also told her that she had a lot of time to find another place.

The Tenant said she continued to seek help for her situation and reached people at a tenancy advisory organization. The Tenant said that the person she spoke with there commented on the Tenant having lived in the rental unit alone for approximately ten years, despite it being a complex for families. The Tenant said she was told that this: "...shows a pattern of acceptance for the way my situation is handled by my Landlord." The Tenant said that the person she spoke with referred her to a legal advocacy service, who advised the Tenant to file an Application for dispute resolution at the RTB to dispute the Two Month Notice. The Tenant applied for RTB dispute resolution on July 31, 2019.

Validity of the Two Month Notice

The Agents said that they served the Tenant with the Two Month Notice, because:

We are BC Housing subsidized family complex. She no longer has children living with her, so BC Housing brought to our attention that it needed to be addressed. We have to follow their Guidelines.

The Parties agreed that the complex has two, three, and four-bedroom units, which means that the Tenant does not have the option of moving into a smaller rental unit.

The tenancy agreement indicates that when the Tenant moved into the residential property in 1995, she was living with her five-year old son. The Tenant said that her son is over 30 years old now and moved out of the rental unit approximately ten years ago; she said she has lived in the rental unit by herself since then. However, the Tenant said that due to her poor health condition, she sometimes needs someone to stay with her, therefore, she needs the two-bedroom unit for this situation.

The Agents directed my attention clause seven of the tenancy agreement they submitted, which states:

7. OCCUPANT(S)

Pursuant to its aforementioned agreement with the Commission, the Landlord has selected the Tenant on the basis of the number of Tenants and Occupants and the Tenant's and Occupant's income and assets. Any change in the number of Tenants and Occupants is material and of great importance to the decision of the Landlord to continue or terminate the tenancy. It is a condition of this Tenancy Agreement that in the event of a change in the number of Tenants or

Occupants in the Premises the Landlord shall have the right to terminate this Tenancy Agreement. The Tenant agrees to notify the Landlord promptly of any change in the number of Tenants or Occupants in the Premises.

The Property is designated for ~~SENIOR CITIZENS~~ *FAMILY*, all Tenants and ~~Occupants~~ must be ADULTS, and at least one Tenant must be aged 55 years or older.

[underlining added for emphasis]

The tenancy agreement goes on to list the Tenant and her son who were 35 and 5-years old, respectively, when the tenancy started.

The tenancy agreement had “SENIOR CITIZENS” crossed out, with “FAMILY” hand written above the crossed-out words. It also had “and Occupants” crossed out, but the rest of the sentence was not crossed out.

The Parties agreed that this indicates that the Landlord was using the wrong template for the tenancy agreement, but that they had amended it somewhat to fit the Tenant’s circumstances. In the hearing the Tenant said:

They didn’t cross out that the tenant must be 55 years or older. They didn’t amend everything. If you follow the part they’re crossing out, I wasn’t 55, I was 35; it wasn’t all adults. It’s a contradictory statement that almost negates itself.

The Agents said that it should be interpreted using common sense. They pointed out that the Tenant and her son would not have qualified, given that it says all tenants must be adults 55 years or older, but they did qualify.

The Tenant responded saying that the Landlord submitted evidence of a lease that was signed “as is”, and that:

I don’t think ‘common sense’ should be a word in there if they’re going by the actual printed items. It doesn’t favour either of us. I’m not a family anymore and there was no one here who was 55 years old. The document shouldn’t be an issue, because it was filled out wrong in the beginning. Pulling apart certain pieces to favour yourself isn’t fair. You have to look at the whole thing.

The Agents said:

We stand behind our tenancy agreement and I don't think we're pulling out something to make our case. This is a family complex and has been since the day it opened and that has not changed.

The Tenant said that there are other people in the complex who do not have children or other family members living with them; therefore, she said she should not have her tenancy terminated for this reason. She said there is a man in a wheel chair in a 2-bedroom unit who lives by himself. "There's been a lot of exceptions; they've made things fit for years. So if everyone else can benefit from those exceptions, why shouldn't I? I do have a legitimate problem and it's not over."

The Agents said that they have only been at the complex for approximately three years, but they understand that the Tenant was ill and fighting cancer after her son moved out, so an exception was made to give her time to deal with the cancer. There is no evidence before me about the specifics of other situations in which exceptions have been granted for other tenants or occupants of the residential property; therefore, I have not considered this matter.

The Agents said that the Tenant's situation "fell by the wayside and then BC Housing brought it to our attention."

The Landlord submitted a letter from the Agent, D.B., to the Tenant dated January 28, 2019, which said:

The Board of Directors of [the Landlord] are aware that you are over-housed and have been for many years. It saddens us all to have to notify you that you must move. We are prepared to give you until July 31, 2019 at the latest to find a home.

Please reach out to BC Housing to assist with another subsidized unit. We will also reach out to BC Housing.

Thank you for the contributions you have made to our complex. We very much appreciate all you have done over the years.

In response to this letter, the Tenant said that she "started desperately looking for housing. I talked to BC Housing and put applications in . . . I went nuts looking for another accommodation.... The climate to find another place to live is horrible. I didn't realize how bad it is."

The Tenant said she does not have anywhere else to go. She said the waiting lists for subsidized housing are years long.

The Agents said that the Board has been pretty lenient, giving seven months' notice to the Tenant and extensions beyond that. They said that they were called by BC Housing in November 2018, asking if the Tenant was still here. The Agent said that according to BC Housing, another housing provider offered a unit to the Tenant, but because the Tenant did not respond, the Landlord was flagged. The Agent said: "A transfer application was filled out for [the Tenant] in 2013. She knows she is over-housed. We are a family housing provider."

The Tenant denied being "over-housed" or having received any offers of other residential accommodation over the years.

The Agents said they agree that there is a housing crisis, but that there are families who need housing, too and that this is a family housing complex.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

More Time to Apply for Dispute Resolution

The Tenant was deemed served with the Two Month Notice on May 16, 2019, pursuant to section 90 of the Act. Our records show that she applied for dispute resolution on July 31, 2019. Section 49.1(5) states that a tenant served with this type of Notice has 15 days after receiving the notice to apply to dispute the Two Month Notice. The Tenant was required to apply to the RTB for dispute resolution by May 31, 2019; however, she applied two months after this deadline.

Section 66 of the Act states that the director may extend a time limit established by this Act only in "exceptional circumstances". Policy Guideline #36 ("PG #36") addresses the meaning of "exceptional circumstances", as follows:

Exceptional Circumstances

The word 'exceptional' means that an ordinary reason for a party not having

complied with a particular time limit will not allow an arbitrator to extend that time limit. The word 'exceptional' implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a 'reason' without any force of persuasion is merely an excuse. Thus, the party putting forward said 'reason' must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might **not** be considered 'exceptional' circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

When I consider all the information before me on this matter on a balance of probabilities, I find in this specific set of circumstances that the Tenant received inappropriate information from professional sources that contributed to her delay in applying for dispute resolution with the RTB. I find this to be exceptional circumstances. Accordingly, I accept the Tenant's Application for More Time to apply for dispute resolution and grant her that time extension to July 31, 2019.

Validity of the Two Month Notice

A Landlord bears the burden of proving the validity of a notice to end a tenancy on a balance of probabilities.

The basis of the Two Month Notice is section 49.1 of the Act: "Landlord's notice: tenant ceases to qualify for rental unit". This section states:

49.1 (1) In this section:

'public housing body' means a prescribed person or organization;

'subsidized rental unit' means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) 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.

(2) 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.

Regarding the discussion about clause seven on the tenancy agreement that has parts crossed out and hand-written in, I find I agree with the Tenant that the inconsistencies do not assist either Party in their positions, and that the document should be considered overall, rather than in a piecemeal manner. I find this includes considering the document in light of the nature of the complex - that it is a family complex and has been since it opened. Based on the evidence before me overall, I find that the Tenant qualified for this subsidized housing, because of her income level and her family status. The tenancy agreement that the Tenant signed clearly states that if the family status changes that the Landlord may terminate the tenancy agreement.

Based on the evidence before me, overall, I find that the Landlord has provided sufficient evidence to end the Tenant's tenancy on the basis of a change in her family status, and the contractual agreement between the Parties. I find that the Landlord was lenient in not enforcing the relevant terms of the tenancy agreement for a number of years, to benefit the Tenant, given her health condition. However, under apparent pressure from BC Housing, the Landlords determined that it was time to enforce the tenancy agreement, which they did with generous advance notice to the Tenant, which I find demonstrates further consideration on the Landlord's part.

Further, I find that the Two Month Notice is consistent with section 52 of the Act, as to form and content. I find that the Two Month Notice is valid, pursuant to the terms of the tenancy agreement and section 49.1 of the Act. I dismiss the Tenant's Application to cancel the Two Month Notice. I award the Landlord with an Order of Possession, pursuant to section 55 of the Act, as of October 31, 2019, as the Tenant paid rent for use and occupancy only for this month.

Conclusion

The Tenant's Application to dispute the Two Month Notice is unsuccessful. The Landlord provided sufficient evidence to establish that the Tenant has ceased to qualify for a rental unit in the Landlord's subsidized, family housing complex. The Landlord provided the Tenant with a Two Month Notice that I found to be consistent with section 52 of the Act as to form and content, and otherwise valid.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord, **after service of this Order** on the Tenant, effective on October 31, 2019 at 1:00 p.m. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 04, 2019

Residential Tenancy Branch