



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

The tenants apply to cancel a two month Notice to End Tenancy dated March 13, 2019. The Notice alleges that the tenants no longer qualify for the subsidized rental unit. That ground, if proven, is a lawful ground for a landlord to end a tenancy under s. 49.1 of the *Residential Tenancy Act* (the “Act”).

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

An interim decision was made in this matter dated May 17, 2019, it should be read in conjunction with this decision.

Issue(s) to be Decided

Have the tenants ceased to qualify for subsidized housing within the meaning ascribed under the *Act*?

Background and Evidence

The rental unit is a four bedroom townhouse. The tenancy started May 2010 pursuant to a written tenancy agreement. The landlord is a non-profit society and operates the residential complex containing this townhouse in conjunction with the British Columbia Housing Corporation (BC Housing).

The rent for the townhouse is \$993.00. Under an agreement with BC Housing, the tenants pay about 30% of their income as rent and BC Housing pays the balance of the rent directly to the landlord. The landlord holds a \$350.00 security deposit.

At the start of this tenancy the tenants had three children living with them and so were housed in a four bedroom accommodation. Since then one of the children has grown up and moved out. The remaining two are approaching adulthood as well and the tenants' housing needs will be further reduced. They are currently suited for a three or even two bedroom accommodation.

Analysis

Section 49.1 of the Act provides:

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.

Evidence was submitted by both sides regarding their efforts or lack thereof, to find smaller accommodation. I have reviewed the tenancy agreement and the operating agreement the landlord has with BC Housing and cannot find any provision requiring the landlord to locate alternate accommodation for a tenant where a tenant has become "over housed" as occurred here.

There is no dispute but that the tenants are no longer in compliance with the Occupancy Guidelines set out in the landlord's operation agreement with BC Housing. I find that the tenants have ceased to qualify for this four bedroom rental unit. As a result, the Notice is a valid Notice and the tenants' application to cancel it must be dismissed.

Conclusion

The tenants' application is dismissed. Pursuant to s. 55 of the *Act* the landlord is entitled to an order of possession. The landlord is amenable to an order effective at the end of November and so an order of possession will issue for then. The tenants are responsible for payment of occupation rent for the duration of their occupancy.

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: October 09, 2019

Residential Tenancy Branch