



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNQ OLC

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 Subsidized Rental Unit pursuant to section 49.1;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to service of the application and respective evidence submissions on file.

Preliminary Issue – Adjournment request by tenant

At the outset of the hearing, the tenant requested an adjournment on the ground that he had been sick for the last three to four weeks. The tenant submits he has no energy, is lethargic and struggled to provide an adequate response to the matter.

The landlord objected to the adjournment arguing the request was not valid. The landlord submits the matter has been ongoing for several months and the tenant was aware of the hearing well in advance and could have prepared a response.

I found the tenant sounded well enough to be able to proceed with this teleconference hearing. I also found that the tenant had plenty of time to prepare as he is the one who filed this application and it was filed over two months ago. The adjournment request was denied.

Issues

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

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

Background & Evidence

The rental unit is a subsidized housing unit. The tenancy for this particular unit began on September 4, 2018. The current subsidized monthly rent is \$375.00 payable on the 1st day of each month.

On July 26, 2019, the landlord served the tenant with a 2 Month Notice to End Tenancy dated July 23, 2019 on the ground the tenant no longer qualifies for the subsidized rental unit. The tenant applied to dispute this Notice within the timeline permitted under the Act.

The landlord submitted that they operate the housing facility through a contract with BC Housing which requires subsidized housing income criteria be met. The landlord submitted the 2018/2019 maximum income rates established by BC Housing. The landlord submits the maximum permitted income at the start of the tenancy was \$34,500.00 and as of January 2019 this increased to \$42,500.00.

The landlord submitted a copy of the tenancy agreement which it argues contains several provisions with respect to BC Housing requirements for income verification, specifically clauses 8, 10 and 11. The landlord submits the tenant provided incomplete and outdated information from CRA pertaining to his old age security pension from April of 2018. The landlord submits that this CRA letter itself indicates that the tenants pension payments were set to increase in 2019.

The landlord submits that the tenant failed to complete a BC Housing Subsidy Application or provide any reliable income documents as proof of eligibility. The landlord submits the tenant only provided written income figures in an e-mail dated May 31, 2019 without any supporting documents. The landlord submitted various letters and e-mail correspondence by which the tenant was advised that he was required to provide proof of eligibility and that he was in breach of his tenancy agreement if he failed to provide such. The landlord testified that they also had a full-time client support worker who attempted to connect with the tenant on numerous occasions to aid with providing

the required documentation. The landlord submits the tenant was unwilling to work with the client support worker.

The tenant argues that there was not any communication from the landlord with respect to the required proof of eligibility. The tenant submits he has provided the required proof of income. Although the tenant argues there was no communication he acknowledged in his testimony receiving a letter from the landlord as early as January 2019 and again in March 2019. The tenant also acknowledged the landlord requesting documents at least 3 times in 9 months. The tenant argues the landlord request for bank statements is intrusive and not compliant with the Charter of Rights and Freedoms.

Analysis

Section 49.1 of the Act contains provisions by which a landlord may end the tenancy of a subsidized rental unit, if provided for in the tenancy agreement, with two months' notice if the tenant or other occupant, as applicable, ceases to qualify for the rental unit. A tenant may dispute a Notice under this section by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

The eligibility requirements of a subsidized rental unit are not within the jurisdiction of the Act. The landlord only needs to provide evidence that the tenant no longer qualifies for the subsidized rental unit based on the established eligibility criteria relating to income, number of occupants, health or other similar criteria.

I find the tenancy agreement entered into and signed by the tenant clearly stipulates the requirement to provide income verification for audit purposes. I find the landlord communicated this requirement to the tenant on several occasions and provided the tenant with more than adequate opportunity to provide such. I find the tenant failed to provide the required income verification as proof of continued eligibility for the subsidized housing program.

I find the landlord has met its onus to establish it had grounds to issue the 2 Month Notice to End Tenancy. The tenant's application to cancel the 2 Month Notice dated July 23, 2019 is dismissed without leave to reapply. I find the notice complies with the form and content requirements of section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As this tenancy has hereby ended, the tenant's application for an order requiring the landlord comply with the Act is moot and also dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 15, 2019

Residential Tenancy Branch