



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNQ

Introduction

The hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy.

The Tenant stated that on November 04, 2019 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents.

In November and December of 2019, the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord, although he cannot recall the date of service. The Agent for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On December 03, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on December 05, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed, but it is only referenced in this written decision if it is directly relevant to my decision.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rent Unit (Notice to End Tenancy) be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in 2010;
- the residential complex is operated by a private, non-profit society that is funded by BC Housing;
- rental unit is a subsidized unit;
- subsidy is based on income level;
- the Landlord mailed the Tenants a Notice to End Tenancy, dated October 17, 2019;
- the Notice to End Tenancy declared that the Tenants must vacate by December 31, 2019;
- the Notice to End Tenancy declared that the tenancy was ending because the Tenants no longer qualified for subsidized rent;
- the Notice to End Tenancy declared that the rental unit must be vacated by December 31, 2019.

The Comptroller stated that:

- the Notice to End Tenancy was served because the Landlord determined that the Tenants no longer qualified for a rental subsidy, based on their income;
- income level must be less than 30% of the market rent to qualify for a subsidy;
- current market rent for this unit \$1,650.00;
- tenants are required to declare income to establish subsidy eligibility;
- the Tenant recently declared an income level of \$1,954.00;
- the Tenant submitted 3 paystubs, from which the Landlord determined that the Tenant has a monthly employment income of \$2,526.00;
- the Tenant declared monthly rental income of \$800.00 from a home he rents out on Marine Drive;
- the Tenant submitted bank statements from March 10, 2019 to June 03, 2019, which show monthly deposits that average \$3,292.00, which the Landlord has determined to be undeclared income;
- a tax refund was not calculated in the undeclared deposits of \$3,292.00;
- the Tenant's bank records show payments to the landlord of the Marine Drive home, in 2014, in the amount of \$900.00;

- the Tenant's bank records show payments to the landlord of the Marine Drive home, in 2015, 2016, and 2017, in the amount of \$500.00;
- the Tenant's bank records show payments to the landlord of the Marine Drive home, in 2019, in the amount of \$600.00;
- the Tenant's bank records show no payments to the landlord of the Marine Drive home in 2018;
- with employment income of \$2,526.00 the Tenant would still qualify for this subsidized unit; and
- based on the Tenant's other income, the Landlord determined the Tenant is no longer eligible for a rent subsidy.

In various written documents the Landlord declared, in part, that:

- the Tenant's rental income from the home on Marine Drive is estimated to be \$30,000.00 per year;
- the Tenant receives \$1,350.00 each month in relation to the Tenant's son's disability;
- bank statements from March 10, 2019 to June 03, 2019, show deposits of \$9,876.48, which is \$3,292.00 monthly income that has not been declared by the Tenant;
- in order to prove that the \$1,350.00 does not qualify as income, the Tenant must prove that he pays this money to a caregiver;
- a caregiver declared that they received compensation in cash, in an undisclosed amount;
- the Tenant's monthly income is \$6,618.88, which includes \$2,526.72 from employment, \$3,292.16 from "other" bank deposits, and \$800.00 in rent; and
- 30% of the Tenant's income is \$1,926.00, which exceeds the market rent of \$1,650.00.

The Tenant stated that:

- he declared monthly income of \$1,954.00;
- his gross monthly employment income may be \$2,526.00;
- he rents a second home on SW Marine Drive so that his son, who has chronic health issues, has a place to do for a short period after school;
- he typically pays his rent of \$2,600.00, in cash, to the landlord of the home on SW Marine Drive;
- when he has insufficient cash, he pays a portion of his rent to the landlord of the home on SW Marine Drive by cheque;
- he sublets this home to two other people, one of whom pays rent of \$1,350.00 per month and one of whom pays rent of \$800.00 per month;
- a portion of the questioned bank deposits of \$3,292.00 that were made between March 10, 2019 and June 03, 2019, was an income tax refund;
- a portion of the questioned bank deposits of \$3,292.00 was a personal loan.

The Tenant provided the Landlord with letters from the people he alleges are his landlord and sub-tenants. The Comptroller noted that the letters are similar and have been written by the same person. He also noted that the Tenant has not submitted a tenancy agreement for the home on Marine Drive.

The Tenant provided the Landlord with a letter, dated September 27, 2019, in which the author declares he/she is paid for caring for the Tenant's son. The author does not disclose the amount he is paid.

The Tenant provided the Landlord with copies of bank statements, which have been provided in evidence. The bank statements indicate several deposits, which have not been included in the \$9,876.48 the Landlord has determined as undeclared income. The Tenant provided the Landlord with a document in which he explains the bank deposits of \$9,876.48 as follows:

- March 10 – \$265.00 - borrowed
- March 15 – \$188.90 - caregiver amount
- March 17 – \$1,369.00 - caregiver amount
- March 24 - \$250.00 - unexplained
- May 17 – \$975.50 - caregiver amount
- April 4 - \$1,350.00 – basement rental
- April 7 - \$480.00 - unexplained
- April 15 - \$207.79 - unexplained
- April 27 – \$882.50 - caregiver amount
- May 1 - \$1,350.00 – rental
- May 5 - \$580.00 - borrowed
- May 15 - \$207.79 – unexplained
- June 02 - \$420.00 - unexplained
- June 3 - \$1,350.00 rental

Total - \$9,876.48 divided by 3 = \$3,292.16

In a letter dated October 28, 2019, the Tenant appealed the decision to end his tenancy and the CEO of the Housing Society upheld the decision to end the tenancy because the Tenant's income did not qualify him for a rental subsidy.

Analysis

Section 49.1 of the *Residential Tenancy Act* (*Act*) applies to a rental unit that is operated by a person or organization and that is occupied by a tenant who is 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.

When a landlord attempts to end a tenancy pursuant to section 49.1 of the *Act*, the landlord bears the burden of proving they have grounds to end the tenancy.

On the basis of the undisputed evidence that this residential complex is operated by a private, non-profit society that is funded by BC Housing; that the rental unit is a subsidized rental unit; and that the subsidy is based on income level, I find that section 49.1 applies to this tenancy.

Section 49.1(2) of the *Act* stipulates that subject to section 50 of the *Act* 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.

On the basis of the undisputed evidence, I find that a Notice to End Tenancy was mailed to the Tenant, pursuant to section 49.1(2) of the *Act*, and that this Notice to End Tenancy declared that the Tenant must vacate the rental unit by December 31, 2019.

On the basis of the undisputed evidence, I find that to qualify for this rental unit the market value of the rental unit must be less than 30% of his monthly income.

On the basis of the undisputed evidence, I find that the market value of this rental unit is \$1,650.00. I therefore find that the Tenant must have monthly income of less than \$5,500.00 to qualify for the subsidized unit.

On the basis of the undisputed evidence, I find that the Tenant earns monthly employment income of \$2,526.00.

On the basis of the evidence submitted by the Tenant and in the absence of credible evidence to the contrary, I find that the Tenant rents a residential complex on SW Marine Drive, although he does not live there, and that he pays monthly rent of \$2,600.00. I find that the Tenant's testimony in this regard is corroborated by a letter

from an individual who alleges he is the landlord of this residence, and I have no reason to discount that document.

On the basis of the evidence submitted by the Tenant and in the absence of credible evidence to the contrary, I find that the Tenant sublets one suite in the residential complex to a sub-tenant, for \$1,350.00. I find that the Tenant's testimony in this regard is corroborated by a letter from an individual who alleges he/she is the sub-tenant, and I have no reason to discount that document. I find that this testimony is also corroborated by the Tenant's bank statements that were submitted in evidence, which show monthly rental deposits in this amount.

On the basis of the evidence submitted by the Tenant and in the absence of credible evidence to the contrary, I find that the Tenant sublets a second suite in the residential complex to a second sub-tenant, for \$800.00. I find that the Tenant's testimony in this regard is corroborated by a letter from another individual who alleges he/she is the sub-tenant, and I have no reason to discount that document. On the basis of the undisputed testimony of the Tenant, I find that this sub-tenant pays the rent in cash.

On the basis of the undisputed testimony of the Tenant, I find that he often pays rent, in cash, for the residential complex on SW Marine Drive, although he pays rent by cheque on occasion if he does not have sufficient cash. On the basis of the bank statements submitted in evidence, I find that he paid \$600.00 in rent by cash for March, April, and May of 2019.

Assuming that the Tenant paid the \$800.00 in cash he received from one of his sub-tenants to the landlord of SW Marine Drive in March, April, and May of 2019, I find that he would have needed to pay the landlord and additional \$1,200.00 for each of those months. On the basis of the cash withdrawals shown on the Tenant's bank statements for those months, I find that it is possible he paid \$1,200.00 rent in cash for those months. (Although the statements only show cash withdrawals of \$560.00 for March of 2019, I do not have any record of transactions prior to March 10, 2019)

As there is sufficient evidence to support the Tenant's submission that he pays \$2,600.00 for the residential complex on SW Marine Drive and that he only collects \$2,000.00 in rent from his sub-tenants, I find that the rent he collects from his sub-tenants is not profit and should not, therefore, be considered income.

On the basis of the undisputed evidence, I find that the Tenant receives a \$1,350.00 disability payment for his son and that, in order to prove that this \$1,350.00 does not qualify as income, the Tenant must prove that he pays this money to a third party caregiver.

I find that the Tenant has submitted insufficient evidence to establish that he paid all of the \$1,350.00 disability payment to a caregiver. Although the Tenant did submit a letter from an individual who allegedly cares for his son, the letter has no evidentiary value as it does not establish how much this individual is paid for this service. As the Tenant has failed to establish how much of the \$1,350.00 payment was paid to a caregiver, I find that it was reasonable for the Landlord to consider the \$1,350.00 disability payment to be income.

In adjudicating this matter, I have considered the questioned bank deposits of \$9,876.48 shown on the bank statements from March 10, 2019 to June 03, 2019, which the Landlord believes is indicative of \$3,292.00 of undeclared monthly income.

The Tenant has reported that \$3,415.90 of the questioned bank deposits was received as a "caregiver amount". I find it reasonable to conclude that these payments would also be considered income unless they are paid out to a third party caregiver. As there is no evidence to establish how much, if any, of these payments are paid to a third party caregiver, I find it reasonable for the Landlord to consider these amounts to be monthly income of \$1,138.63 (\$3,415.90 divided by 3).

The Tenant has reported that \$4,050.00 of the questioned bank deposits was received as rent. As I have previously determined that the rent should not be considered income, I have not considered this amount when considering the questioned deposits.

The Tenant has reported that \$845.00 of the questioned bank deposits were loans. As the Tenant has provided a reasonable explanation of these deposits, I find that they should not be considered as income.

The Tenant has failed to report a source for \$1,565.58 of the questioned bank deposits. As the Tenant has not provided a reasonable explanation for those deposits, I find it reasonable for the Landlord to consider these amounts to be monthly income of \$521.86 (\$1,565.58 divided by 3).

Based on these findings, I find it is reasonable for the Landlord to calculate the Tenant's monthly income as follows:

- Employment income - \$2,526.00
- Disability income - \$1,350.00
- Caregiver income - \$1,138.63
- Income from undisclosed source(s) - \$521.86

Total - \$5,536.49

As the Landlord has establish that the Tenant's monthly income exceeds the income threshold of \$5,500.00, I find that the Landlord has established grounds to end this tenancy pursuant to section 49.1 of the *Act*. I therefore dismiss the Tenant's application to cancel the Notice to End Tenancy.

As the Tenant's application to set aside the Notice to End Tenancy has been dismissed, I must grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

The Tenant's application to cancel the Two Month to End Tenancy Tenant Because the Tenant Does Not Qualify for Subsidized Rent Unit is dismissed.

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on January 31, 2020. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

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

Dated: December 24, 2019

Residential Tenancy Branch