



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING NON PROFIT RENTAL ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ FFT

Introduction

This hearing dealt with the tenants' 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 the Subsidized Rental Unit ("2 Month Notice"); and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants attended the hearing with their counsel AK. The landlord was represented by their agents LS and SH. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 2 Month Notice dated November 20, 2019, which was served to them by way of registered mail, I find that this document was deemed served to the tenants in accordance with sections 88 and 90 of the *Act* on November 25, 2019, five days after mailing.

Issues to be Decided

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on January 1, 2015. The monthly rent is currently set at \$1,850.00, payable before the first of every month. The tenants reside in a subsidized housing unit where the portion of rent and their eligibility for subsidized housing is determined by their income. The tenants were paying \$943.00 as their portion for the monthly rent to the landlord. The tenants paid a security deposit in the amount of \$450.00, which the landlord still holds.

On November 20, 2019 the landlord issued the 2 Month Notice for the following reason:

- The tenant no longer qualifies for the subsidized rental unit.

The tenants are disputing the 2 Month Notice as the tenancy agreement they signed does not clearly state that their tenancy would end once they no longer qualify for a subsidy. Furthermore, the tenants state that in the past other tenants were allowed to remain despite the fact that they no longer qualified, or their situations had changed. The tenants testified that upon move-in they had a discussion with the building manager who assured them that even if they no longer qualified for the subsidy, that they would be allowed to stay.

The landlord's agent did not dispute that in the past tenants had been allowed to stay despite no longer qualifying for subsidized housing. The landlord's agent testified that their mandate was to provide affordable housing to families who need it, and the tenants have benefited from this mandate. The landlord's agent testified that the housing market has changed substantially. The landlord testified that there is a shortage of vacancies even for rental units at market rent, and the landlord has a duty to maintain a percentage of subsidized housing. The landlord disputes the tenants' claims that the building manager or any employee has provided assurance that tenants would be not be evicted if they no longer qualify for a subsidy.

Both parties provided a copy of the tenancy agreement, which includes reasons for why the tenancy may end, including violation of the listed provisions. Both parties agree that the tenancy agreement does not clearly state that the tenancy would end on the basis of the tenants' failure to qualify for a subsidy.

Analysis

Subsection 49.1(2) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if:

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.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy the tenants may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants filed his application on November 24, 2019, within the required time period. As the tenants filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

Although it is undisputed that the tenants no longer qualify for a subsidy as determined by the landlord, I am not satisfied that the tenancy agreement contains a requirement that the tenants must continue to qualify for this subsidy, and failure to do so would consequently mean the end of the tenancy.

Section 49.1(2) of the *Act* clearly sets out that the landlord may end a tenancy under this section if the tenant no longer qualifies for the rental unit, and the tenancy agreement provides for this. Although the tenancy agreement does list several reasons for why the tenancy may end, I find that there is no clause that clearly states that the tenancy would end upon failing to qualify for a subsidy.

The landlord's 2 Month Notice, dated November 20, 2019, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenants are entitled to recover the filing fee for this application.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated November 20, 2019 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: January 21, 2020

Residential Tenancy Branch