



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes

OPQ, FFL

Introduction

This hearing dealt with a landlord's application for an Order of Possession based on a *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit*. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The landlord's agent testified the landlord's proceeding package and supporting materials were served to the tenant by posting them on the rental unit door on January 29, 2020 in the presence of a witness.

The tenant stated she could not recall seeing the documents posted to her door but acknowledged she understood the purpose for this proceeding is to consider the enforceability of the *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit* she received and the status of her tenancy.

I was satisfied the landlord met its obligation to serve the tenant with the proceeding documents in a manner that complies with section 89 of the Act and I deemed the tenant sufficiently served with the hearing documents. However, out of an abundance of fairness to the tenant, I had the landlord orally describe its position and evidence so that the tenant may hear and respond to the relevant facts.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The month to month tenancy for the subject rental unit started on March 1, 2018. The market rent for the rental unit was set at \$1,420.00 payable on the first day of every month; however, the tenancy agreement provides that the tenant is responsible to pay the Tenant Rent Contribution determined after applying a rent subsidy. The landlord is holding a security deposit of \$710.00 for the tenant. The tenancy agreement reflects that the tenant is the sole tenant and the unit would be occupied by her and her three children.

The landlord is a housing society that provides subsidized housing in accordance with an operating agreement with the British Columbia Housing Management Commission. Eligibility for the subsidized rental unit is dependant upon family composition and household income and assets. Every year the tenant is required to provide the landlord with information and documentation so that the landlord may determine the tenant's ongoing eligibility for the subsidized unit and calculation of the rent subsidy.

It was undisputed that the last time the landlord received eligibility documentation from the tenant was in December 2018 for the 2019 subsidy year. The landlord's agent stated on September 4, 2019 the landlord obtained information pointing to the tenant's children no longer residing in the rental unit and an unauthorized occupant having moved into the rental unit. On September 4, 2019 the landlord sent a letter to the tenant requesting documentation to determine the tenant's ongoing eligibility to occupy the rental unit. No response was received from the tenant so another letter was sent to the tenant on October 2, 2019 requesting documentation and putting the tenant on notice that failure to provide the documentation would result in issuance of a *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit*. The landlord did not receive a response from the tenant and sent a *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit* to the tenant via registered mail on October 22, 2019. The registered mail was successfully delivered on November 2, 2019.

The tenant admitted that she did not submit documentation to the landlord in an effort to protest what she considered inappropriate behaviour such as gossiping. The tenant denied that someone else moved into the rental unit. The tenant denied that her children were removed by the Ministry but she also stated that currently she sees her children on the weekends and that she resides in the rental unit by herself.

After receiving the Two Month Notice the tenant filed to dispute it by filing an Application for Dispute Resolution on November 20, 2019 (file number referenced on the cover page of this decision). A hearing was held on January 17, 2020 and on that date only the landlord appeared. The tenant's Application for Dispute Resolution was dismissed, without leave, due to her failure to appear for the hearing. An Order of Possession was not provided to the landlord because neither the tenant, nor the landlord, had provided a copy of the *Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit* and criteria for providing an Order of Possession under section 55(1) could not be verified. The tenant stated that she missed the January 17, 2020 hearing because she overslept. The tenant did not file an Application for Review Consideration with respect to the decision of January 17, 2020.

The tenant states that she has gathered the documentation necessary to verify her income and she uploaded it to the Residential Tenancy Branch in the few days before today's hearing; however, the tenant admitted that she has not served it to the landlord at any time.

During the hearing, I orally provided the parties with my finding that I was satisfied the landlord was entitled to an Order of Possession.

The landlord requested an Order of Possession effective as soon as possible but recognized that the landlord is not going to evict the tenant during the COVID-19 outbreak and stated the landlord would be willing to accept an Order of Possession with an effective date of April 30, 2020. The tenant indicated she appreciated that amount of time to vacate and did not request more time.

Analysis

In this case, it was undisputed that the landlord is a housing society that operates the residential property in accordance with an operating agreement with the British Columbia Housing Management Commission. Accordingly, I find the landlord is a public housing body as defined under Section 2 of the Residential Tenancy Regulations.

It was also undisputed that the tenant was selected by the landlord, a public housing body, based on the number of occupants and the household income and assets and that the tenant is required to demonstrate ongoing eligibility to occupy the rental unit based on the household composition and household income and assets. As such, I find the rental unit is a "subsidized rental unit".

Section 49.1 of the Act provides that a landlord may end a tenancy for a subsidized rental unit where:

(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.

The landlord served the tenant with a Notice to End Tenancy under section 49.1 due to the tenant's failure to provide documentation sufficient for the landlord to determine the household income and the tenant's ongoing eligibility to occupy the rental unit. Upon review of the Notice I am satisfied it is in the approved form and it is duly signed and completed.

The Notice was sent to the tenant via registered mail on October 22, 2019 and a search of the registered mail tracking number shows that the registered mail was successfully delivered on November 2, 2019. A tenant in receipt of a Notice to End Tenancy issued under section 49.1 has 15 days from the date they receive the Notice to file an Application for Dispute Resolution to dispute it. The tenant filed to dispute the Notice to End Tenancy on November 20, 2019, which is late; however, her application to have the Notice to End tenancy cancelled was dismissed to her failure to appear for the hearing on January 17, 2020. The tenant did not seek a review hearing of that proceeding and the time limit or filing an Application for Dispute Resolution to dispute the Notice has long since expired. Therefore, I find the landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

Under section 55(2), a landlord may seek an Order of Possession where:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Having found the tenant's Application for Dispute Resolution to dispute the Notice to End Tenancy was dismissed and time limit for disputing the Notice to End tenancy has expired, I grant the landlord's request for an Order of Possession under section 55(2)(b) of the Act.

I find the landlord's request for an Order of Possession with an effective date of April 30, 2020 to be very reasonable and the date was not opposed by the tenant. Therefore, I provide the landlord with an Order of Possession that is effective at 1:00 p.m. on April 30, 2020.

The landlord's Application for Dispute Resolution had merit and I award the landlord recovery of the \$100.00 filing fee from the tenant. The landlord is authorized to deduct \$100.00 from the tenant's security deposit to recover this award.

Conclusion

The landlord is provided an Order of Possession effective at 1:00 p.m. on April 30, 2020.

The landlord is awarded recovery of the filing fee and in satisfaction of the award the landlord is authorized to deduct \$100.00 from the tenant's security deposit.

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: March 20, 2020

Residential Tenancy Branch