



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPQ, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession because the tenant does not qualify for subsidized housing, and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony, and was accompanied by another agent of the landlord, who did not testify or take part in the hearing. The tenant also attended and gave affirmed testimony. The parties were given the opportunity to question each other.

No issues with respect to service or delivery of evidence were raised, and all evidence of the parties has been reviewed and is considered in this Decision.

Issues to be Decided

Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 1, 2014 and the tenant still resides in the rental unit. Rent is determined by the gross monthly income of the tenant, being 30%, and is currently \$723.00 per month payable on the 1st day of each month. Rental arrears are currently over \$2,000.00. No security deposit or pet damage deposit was collected by the landlord, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on or about February 24, 2020 the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit, and a copy of the first 2 pages of the 4-page notice has been provided as evidence for this hearing. It is dated February 24, 2020 and contains an effective date of vacancy of April 30, 2020. The reason for issuing it states: "The tenant no longer qualifies for the subsidized rental unit." The landlord's agent does not know how many pages were served or how the Notice was served; it was done by another agent of the landlord.

The landlord's agent further testified that paragraph 10 of the tenancy agreement specifies that it is a material term of the tenancy to provide documentation regarding income of the tenant. The tenant's most recent position is that the landlord doesn't have the right to ask for any documentation except Canada Revenue Agency documents, and that's what the tenant wants the landlord to use to base the rent on.

Paragraph 10(b) of the tenancy agreement states that the tenant must consent to the landlord verifying personal information to enable the landlord to carry out its rent calculation and audit functions, and the tenant has withdrawn his consent. If the tenant doesn't consent, the tenant doesn't qualify for subsidized housing. The tenant has provided the landlord with documentation regarding special consideration, which speaks about fluctuating income, and that a Notice of Assessment can be used to determine income, however, the tenant does not tell the landlord what to consider. The tenant hasn't shown that he is self-employed, and without documentation to prove it, the landlord does not believe that the tenant qualifies for special consideration. For determining rental amounts, it may or may not include CRA income for the year, due to fluctuations. The landlord would be happy to follow that, but needs the documentation to see income for rental calculation purposes. Currently the landlord has no way of knowing what the tenant's income is, and the documentation is a requirement of the BC Government to qualify for the subsidy.

The tenant testified that he received the notice to end the tenancy on his door, but has not filed an Application for Dispute Resolution disputing it.

The tenant further testified that the Canada Revenue Agency determines the tenant's income. The official taxes are completed by an accountant and that's good enough for anyone else, so should be good enough for BC Housing.

At the time that the tenancy agreement was signed, it was a simple calculation of 30%, not complicated, but now it is complicated and the tenant's income was going down but the rent was going up. The tenant seeks special consideration by providing the CRA

documents, and the tenant disputes the accounting skills of the landlords. Instead of communicating with the tenant, the landlords serve the tenant with notices.

Analysis

I have reviewed the Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit (the Notice), however the landlords' agent was not able to provide evidence or testimony of how or when the Notice was given to the tenant. Further, the Notice provided as evidence for this hearing contains only 2 of the required 4 pages. Therefore, I cannot be satisfied that the Notice served to the tenant was given in the approved form, and the landlords' application for an Order of Possession is dismissed.

Since the landlords have not been successful with the application, the landlords are not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety.

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: November 12, 2020

Residential Tenancy Branch