



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a notice to end tenancy issued because the tenant does not qualify for a subsidized rental unit.

The landlord was represented at the hearing by a supportive housing manager, CN ("landlord"). The tenant attended the hearing and was represented by a social worker, AM. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and stated she had no issues with timely service of documents. The landlord testified she posted a copy of her evidence package on the tenant's door on November 20, 2020 which the tenant does not deny; however, the landlord testified the tenant has not taken the evidence package off the door since she put it there. I deem the landlord's evidence package sufficiently served on the tenant on November 23rd, 3 days after posting to the tenant's door in accordance with sections 88 and 90 of the Act.

Issue(s) to be Decided

Should the landlord's Two Month's Notice to End Tenancy be upheld or cancelled?

Background and Evidence

The landlord gave the following testimony. The tenancy began on May 1, 2016. The rental unit is a subsidized housing unit with rent being subsidized by BC Housing. The landlord testified that the market rate for the unit is \$1,022.00 per month, however the tenant only pays \$375.00 per month. The rent has remained at that amount since the tenancy began. A security deposit of \$187.50 was collected from the tenant at the beginning of the tenancy which the landlord continues to hold.

On September 26, 2020, the landlord served the tenant with a 2 month notice to end tenancy because the tenant does not qualify for subsidized rental unit. The effective date stated on the notice is November 30, 2020 and the reason for ending the tenancy is because the tenant no longer qualifies for the subsidized rental unit.

The landlord testified that the rental unit is a Single Room Occupancy (SRO) unit located in a city where there is an abundant need for low-cost housing with very few units available. The tenant has been using the unit as a mailing address for receiving mail only, not occupying the unit as a living accommodation. The landlord testified that the tenancy agreement has a schedule "A" to it, which includes the following terms:

A.6 absence from the premises

Even if the rent is paid on time, if the tenant is absent from the premises for three consecutive months or longer without written approval from the landlord, the landlord may evict the tenant with a 30-day Notice to end tenancy.

A.7 Basis of tenancy

The landlord chose the tenant based on the information that shows that the tenant qualifies for this housing. The landlord has the right to terminate the agreement:

If the tenant does not qualify for rent subsidy

If there is a change in the family size that means the family is over-housed or under-housed as shown in the National Occupancy Standards under the National Housing Act.

Note: these are the National Occupancy Standards:

- 1. No more than 2 or fewer than 1 person per bedroom*
- 2. Parents do not share a bedroom with their children*
- 3. Dependents aged 18 or over do not share*
- 4. Dependents of opposite sex aged 5 or over do not share*
- 5. Spouses or couples share*

The tenant has not been staying consecutive nights in the rental unit, breaching clause A.6 of the tenancy agreement addendum. As their facility serves a marginal community verging on homeless, the unit could be offered to a person who could use the housing. The landlord goes on to say that the tenant is also breaching A.7 of the addendum because he no longer qualifies for the subsidized housing by not living on the premises. As proof, the landlord provided "tracking records" where the staff at the facility note the presence of the occupant daily. The landlord supplied "tracking records" dating back to

January 2020 and testified the records indicate the tenant only came to pick up mail, not live in his unit.

The tenant's agent gave the following submissions. He acknowledges the tenant has not been staying in the unit since the beginning of the pandemic. The tenant has an immune system compromise due to being HIV positive and living in the facility is a danger to the tenant's health. The tenant submits that he made verbal arrangements with the landlord whereby he could check-in with the staff there and not have to physically reside there. The tenant acknowledges this agreement was not put into writing and the landlord denies this agreement existed. In response, the landlord reasserted that she told the tenant he needed to stay in his room at least once a week and use it as a home.

The tenant submits the tracking forms used to document the coming and going of the tenant is both confusing and detrimental to the landlord's argument that the tenant does not attend at the facility. The form does not prove the tenant doesn't actually go into his unit to spend the night. Clause A.6 of the addendum requires the tenant to not be "absent" from the premises for more than 3 consecutive months and the records prove the tenant has not been absent. The landlord acknowledges the tenant comes in to pick up his mail. Clause A.7 is more in line with the qualification for subsidized housing, which is a BC Housing issue. The tenant's agent questions how clause A.6 disqualifies the tenant from the BC Housing subsidy.

The tenant does not deny he hasn't been residing in the unit, due to his compromised health from a weakened immune system. The tenant testified that he believes the last time he stayed in the rental unit was 2 months ago. He has been staying at his partner's house because his partner and those living in that house all wear masks and are careful not to spread the covid-19 virus. If he loses this housing, however he will become homeless.

Analysis

Based on the landlord's testimony, I am satisfied the tenant was served with the 2 month notice to end tenancy on September 29, 2020, three days after posting to the tenant's door in accordance with sections 88 and 90 of the Act. The tenant failed to dispute the notice on September 30, 2020, the following day, within the allowed timeframe pursuant to section 49.1(5).

Section 49.1 describes the situations where a landlord can end a tenancy when the tenant ceases to qualify for a rental unit:

49.1 Landlord's notice: tenant ceases to qualify for rental unit

(1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was 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.

(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.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Here, the landlord proposes the tenant's breach of clause A.6 of the tenancy agreement renders him unqualified to remain in the subsidized rental unit. Once again, A.6 reads:

A.6 absence from the premises

Even if the rent is paid on time, if the tenant is absent from the premises for three consecutive months or longer without written approval from the landlord, the landlord may evict the tenant with a 30-day Notice to end tenancy.

I find the landlord's argument that the tenant being absent from the premises makes him ineligible to qualify for the subsidized rental unit to be misguided. While the landlord may be able to present a reasonable argument that clause A.6 could be considered a material term of the tenancy, I do not find that clause sufficiently demonstrates whether the tenant can be considered unqualified for the subsidized unit. As stated in section 49.1(1)(b), a rental unit is considered subsidized if the requirements for demonstration are that the tenant meets eligibility criteria related to **income, number of occupants, health or other similar criteria** in relation to the rental unit. I do not find that being absent for a period of 3 months or more in any way meets any of the criteria as set out in section 49.1. I further find that the 3 month "no absence" term vague and prone to misinterpretation, as it does not specifically set out that the tenant must physically spend the night in his room.

I find that the criteria for determining what qualifies a tenant to remain living in the subsidized rental unit can be found in clause A.7 of the tenancy agreement addendum. Here, the National Occupancy Standards as set out in the National Housing Act are clearly laid out. Based on the qualifications set out in clause A.7, I find insufficient evidence from the landlord to show that the tenant has failed to meet any of them. As such, I find the tenant has not ceased to qualify for the subsidized rental unit and the landlord's notice to end tenancy is cancelled and of no further force or effect.

Conclusion

The notice to end tenancy issued on September 16, 2020 is cancelled and of no further force or effect.

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: December 07, 2020

Residential Tenancy Branch