



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49.1; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord’s Agent (the “Landlord”) confirms that the person named as landlord on this application is an agent of the society that operates the housing containing the unit.

Issue(s) to be Decided

Has the Tenant ceased to qualify for the unit?

Background and Evidence

The following are agreed facts: the tenancy under written agreement of a three-bedroom unit started November 24, 2020. Subsidized rent of \$592.00 is payable on the first day of each month. On November 24, 2020 the Landlord served the Tenant with a two-month notice to end tenancy because the Tenant does not qualify for the subsidized rental unit. The effective date of the Notice is March 31, 2021.

The Landlord states that clauses 10 and 11 of the tenancy agreement set out the criteria for qualifying for the unit and that they are ending the tenancy on the basis that:

- the Tenant has married and is maintaining two households. The Landlord was informed by the Tenant of this fact on November 9, 2020;

- the number of occupants of the unit is not sufficient for the unit as the adult child “N” is no longer living in the unit and the unit is for one adult and 3 minor children. The Landlord provides copies of online pages as evidence that N is “travelling the world”;
- the Tenant did not provide proof of all household income, in particular the income of N and the Landlord states that N is residing in the unit. The Landlord states that it has no evidence that N is receiving income that is required to be reported;
- that the Tenant is receiving income from an online business and has not declared this income. The Landlord states that it has no evidence of the Tenant obtaining extra income and is basing its belief of extra income on an online site advertising items for purchase and reviews of the quality of the items;
- the Tenant is not residing the minimum of 322 days in the unit. The Landlord has no idea how many days the Tenant is residing in the unit and has no evidence to support this criterion.

The Landlord states that on May 1, 2020, and within the required time, the Tenant provided proof of its annual income and household occupants. The Landlord states that the Tenant is required to have all adult occupants of the unit to sign the income statement and that it was not signed by N. The Landlord confirms N’s birthdate and confirms that N was not an adult at the time the annual income form was signed.

The Tenant states that it provided a truthful statement of all household income in the May 2020 statement, that N became an adult after this statement was provided and that N continues to occupy the unit. The Tenant states that N is not receiving any income and is a college student attending online. The Tenant states that the Landlord has not asked for any further proof of income or occupants since May 2020. The Tenant states that it is not maintaining a second household and that her husband used to live in another area for a month.

Analysis

Section 49.1(2) of the Act provides that 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. Clause 11 of the tenancy agreement sets out that in order to be eligible for a subsidized rental unit:

- The Landlord must have an available subsidy;
- The Tenant must provide timely proof of gross household income and assets for all adult occupants residing in the unit on an annual basis or as required from time to time by the Landlord;
- The number of occupants residing in the unit must meet the criteria in clause 10.a of this agreement.

Clause 10.a of the tenancy agreement provides that the Tenant has been selected on the basis that the number of Tenants and occupants are appropriate to the unit size. Clause 10 of the tenancy agreement sets out criteria that must be met, the failure of which will be considered a breach of a material term. These criteria include:

- the tenant residing in the unit a minimum of 322 days; and
- the tenants' and occupants' gross family income with declaration that it is less than the maximum permitted.

The Landlord is seeking to end the tenancy on the basis that the Tenant does not qualify for the subsidized rental unit and not for breaches of material terms. The Landlord's evidence in relation to the minimum stay is therefore not a basis to end the tenancy as allowed under Clause 11.

There is no evidence that the Landlord is ending the tenancy as they do not have an available subsidy. There is no evidence that the Tenant has not provided timely proof of gross household income when the Landlord required this information in May 2020. There is no evidence that the Landlord has since required proof of annual income or occupancy since this date and the Landlord has no supporting evidence of additional income or occupancy since this date. I do not consider online pages to be reliable

evidence of either income or occupancy of the unit, particularly where those pages do not provide any evidence of such. As the Landlord gives evidence that the unit is both occupied and not occupied by N I prefer the Tenant's evidence and find that the unit is occupied by N who has not received any income that was required to be reported.

There does not appear to be a term in the tenancy agreement allowing an end to the tenancy for a tenant maintaining two households, the Landlord did not state the relevance of this evidence to the eligibility criteria and the relevance of this evidence is not readily apparent. Further the Landlord did not give any evidence in response to the Tenant's evidence that her husband lived in a different area for a month. As a result, I find that the Landlord has not substantiated that this evidence supports an end to the tenancy for not meeting the eligibility criteria.

For the above reasons I find that the Landlord has not provided sufficient evidence that the Tenant has ceased to qualify for the unit, and I find that the Notice is therefore not valid. The Tenant is entitled to its cancellation and the tenancy continues. As the Tenant's application has been successful, I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from the subsidized rental amount payable by the Tenant in full satisfaction of the claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: February 24, 2021

Residential Tenancy Branch