Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on December 11, 2020 (the "Application"). The Tenant applied to dispute a Two Month Notice to End Tenancy Issued Because Tenant Does Not Qualify for Subsidized Rental Unit dated December 04, 2020 (the "Notice").

The Tenant appeared at the hearing with Legal Counsel and B.F. S.T. and S.F. appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

S.T. confirmed receipt of the hearing package and Tenant's evidence.

The Tenant testified that she did not receive the Landlord's evidence. S.F. testified that the Landlord's evidence was sent to the rental unit by registered mail. The Landlord had submitted tracking information for Tracking Number 1. S.F. confirmed Tracking Number 1 relates to the Landlord's evidence package. I looked Tracking Number 1 up on the Canada Post website which shows the package was sent February 12, 2021 and a notice card for the package was left on February 15, 2021.

The Tenant testified that she has been at the rental unit and that there has not been a notice card left at the rental unit.

I was satisfied based on the testimony of S.F., which was supported by the tracking information, that the Landlord served their evidence on the Tenant in accordance with section 88(c) of the *Residential Tenancy Act* (the "*Act*"). Pursuant to section 90(a) of

the *Act*, the Tenant is deemed to have received the package February 17, 2021. The Tenant cannot avoid service by failing to pick up registered mail.

I acknowledged that the Tenant testified that she did not receive a notice card. However, the Canada Post website shows a notice card was left and I did not find the Tenant's testimony sufficient to overcome the Canada Post website information. I also acknowledged that the Tenant could rebut the deeming provision as explained at pages 13 to 14 of Policy Guideline 12. However, the Tenant would need to provide clear evidence to rebut the deeming provision. I was not satisfied the Tenant's testimony alone was sufficient to rebut the deeming provision.

I told the parties the above decision. Given the decision, S.T. emailed a copy of the Landlord's evidence to Legal Counsel to review. I gave Legal Counsel time to review the Landlord's evidence during the hearing. I noted that the Landlord's evidence was mostly information the Tenant should already have. Legal Counsel agreed the Landlord's evidence is information the Tenant had already seen.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

The Landlord submitted a written tenancy agreement and the parties agreed it is accurate. The tenancy started June 01, 2018 and is a month-to-month tenancy. The agreement includes an addendum with term 36 about material covenants, term 37 about occupants, term 38 about declaration of income and family composition and term 41 about the national occupancy standard.

The Notice was submitted. The grounds for the Notice are that the Tenant no longer qualifies for the subsidized rental unit.

S.T. testified that the Notice was posted to the door of the rental unit December 04, 2020. The Landlord submitted a Proof of Service signed by a witness confirming service of the Notice.

The Tenant testified that she received the Notice by email December 04, 2020.

The Landlord provided written submissions, an outline of which is as follows. The Tenant resides in a two bedroom subsidized housing rental unit. The Tenant's child has not been in the Tenant's care since January of 2020. According to BC Housing, a person is considered to have a child in the home if the child stays with them three nights a week or the equivalent. The National Occupancy Standards outlined in term 41 of the tenancy agreement state, "No more than 2 and no fewer than 1 person per bedroom". Term 37 of the tenancy agreement states that, if there is a change in the number of occupants of the rental unit, the Landlord must be informed promptly and may terminate the agreement. The Landlord asked the Tenant to provide proof that her child is in her care by December 18, 2020. As of February of 2021, the Landlord has not received notification that the Tenant's child has been returned to her care. The Tenant has been in the rental unit for a year without her child. The Landlord has given the Tenant a significant amount of time to have her child returned to her care.

S.T. relied on the Landlord's written submissions and testified as follows. The Tenant's child has not been in her care since January of 2020. The Tenant is over housed. There has been a change in the Tenant's household composition. There is one person, the Tenant, living in a two bedroom unit. The Tenant has also violated the tenancy agreement. As of the date of the hearing, the Landlord has not received proof of the Tenant's child being returned to her care and there has been no progress in this regard.

Legal Counsel asked S.T. and S.F. questions during which S.T. testified that the Landlord has not been provided anything showing reunification is imminent.

Legal Counsel made the following submissions. The Landlord is obligated to determine if there has been a change in the number of occupants of the rental unit. There has not been a change in the number of occupants because the Tenant is in the process of reunification. It is clear from the letters submitted by the Tenant that reunification is the goal. The delays in the reunification process are not the fault of the Tenant. As long as the Tenant is working towards reunification, removing housing is not appropriate and does not fulfill the intention of the legislation or the concept of being over housed. It is unreasonable to consider the Tenant to not have her child in her care until there is a clear decision on this.

Legal Counsel made the following further submissions. Terms 8 and 37 of the tenancy agreement are relevant. Term 37 refers to "dependents", which the Tenant's child is. There is no specific definition of "dependent" or what happens when a child is temporarily removed from a tenant's care. The Landlord's position is that the Tenant's child is no longer a dependent; however, this is not a reasonable interpretation of term 37. Here, the Tenant's child is still a dependent because the Tenant is working towards reunification and her child could be returned at any time. The Tenant, who is honestly working towards reunification, should not lose her housing because this would prevent her from having her child returned to her care. The issue here is whether the Tenant has ceased to qualify for the rental unit. A reasonable interpretation of section 49.1(2) of the *Act* would be that the Tenant continues to qualify as long as she is engaged in the reunification process.

Legal Counsel made the following further submissions. The Tenant's child lived with her when the tenancy agreement was entered into. The Tenant's child has not lived with her since January of 2020; however, the Tenant has been working with the relevant Ministry for reunification since January of 2020. Reunification is a realistic prospect. Here, the Tenant has been working towards reunification for a year; however, there could be circumstances where a tenant's child is returned within weeks. The issue is, at what point does a tenant cease to qualify for the rental unit? When determining whether a tenant ceases to qualify for the rental unit, the marker should not be the date of apprehension of their child. The marker should be a determination that there is no reasonable prospect of reunification or that the tenant is not working towards reunification.

In reply, S.T. testified that a tenant can remain over housed for up to six months when a child is apprehended; however, after six months, additional documentation must be obtained to see if and when the child will return and it is up to the Landlord to decide whether to allow the tenancy to continue. S.T. stated that the Landlord has waited a year and everything the Landlord has seen says the Tenant's child might be returned to her care, not that the Tenant's child will be returned to her care.

Analysis

The Notice was issued pursuant to section 49.1 of the *Act*. The Tenant had 15 days from receipt of the Notice to dispute it pursuant to section 49.1(5) of the *Act*. Based on the testimony of the parties, I accept that the Tenant received the Notice December 04, 2020. The Application was filed December 11, 2020, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure.

Section 49.1(2) of the *Act* states:

> (2) Subject to section 50…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.

Both parties acknowledged that the Tenant's child was in her care when she entered into the tenancy agreement in June of 2018, and that the Tenant's child was removed from her care in January of 2020.

I am satisfied based on the letters submitted by the Tenant that the Tenant has been actively engaged in the process of having her child returned to her care.

Further, I do not accept the Landlord's suggestion that there is no evidence that the Tenant's child will be returned to the Tenant's care. In my view, the letters submitted by the Tenant do contemplate the Tenant's child being returned to her care and living in the rental unit.

The issue before me is the interpretation of "ceases to qualify" in section 49.1 of the *Act.* The Landlord states that a tenant can remain over housed for six months after having their child removed from their care after which point it is up to the Landlord to decide whether to allow the tenant to remain in the rental unit. The Tenant submitted that whether a tenant ceases to qualify for a rental unit when their child is removed from their care should be considered holistically and include a consideration of the process of having their child returned to their care.

I do not see any evidence in the materials provided that supports the Landlord's position that a tenant can remain over housed for six months at which point it is up to the Landlord as to whether to allow the tenant to remain in the rental unit. Further, term 37 of the tenancy agreement does not address this issue.

I find the Tenant has raised a valid issue in relation to the grounds for the Notice and I find the Landlord has not provided sufficient documentary evidence to address this issue. In these circumstances, I am not satisfied the Landlord has demonstrated the point at which the Tenant ceases to qualify for the rental unit. I find the Tenant has sufficiently demonstrated that she is in the process of having her child returned to her

care and find this to be persuasive to her point regarding a holistic interpretation of "ceases to qualify" in section 49.1 of the *Act*. In the absence of further documentary evidence on this issue, I am not satisfied the Landlord has proven they had grounds to issue the Notice and I cancel the Notice.

The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: March 18, 2021

Residential Tenancy Branch