



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 OPQ, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession because the tenants do not qualify for the subsidized rental unit, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, female tenant ("tenant") and "male tenant," did not attend this hearing, which lasted approximately 27 minutes. The landlord's two agents, landlord JL ("landlord") and "landlord MG" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that she was the property manager and landlord MG confirmed that she was the director of operations, both employed by the landlord company named in this application. Both landlord agents confirmed that they had permission to represent the landlord company at this hearing.

The landlord confirmed that the tenants were each served with separate copies of the landlord's application for dispute resolution hearing package on December 16, 2020, by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on December 21, 2020, five days after their registered mailings.

The landlord confirmed that she posted the landlord's 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, dated September 24, 2020 ("2 Month Notice"), to the tenants' rental unit door on the same date. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 2 Month Notice on September 27, 2020, three days after its posting.

Issues to be Decided

Is the landlord entitled to an order of possession because the tenants do not qualify for the subsidized rental unit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on June 1, 2009. Monthly rent in the subsidized amount of \$510.00 was payable on the first day of each month. A security deposit of \$400.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit. The male tenant is the son of the tenant.

The landlord confirmed that the 2 Month Notice, which has an effective move-out date of November 30, 2020, was issued to the tenants for the following reason:

- *the tenant no longer qualifies for the subsidized rental unit.*

The landlord stated the following facts. She issued the 2 Month Notice to the tenants because they no longer qualify for the subsidized rental unit. The tenants did not dispute the 2 Month Notice. The tenant did not comply with the annual income review and was provided four warning letters by the landlord on June 1, July 16, August 18 and September 24, 2020. The landlord provided copies of these letters for this hearing. The tenant was required to provide her income information to the landlord prior to October 1, 2020, when the new rental subsidy rate would be effective. The landlord had verbal conversations with the tenant in September 2020 to remind her of the due date to provide the information and re-sent the information to the tenant repeatedly. The landlord provided a final warning letter on November 25, 2020, after the 2 Month Notice was issued, along with the information again, after the landlord had a verbal conversation with the tenant on November 19, 2020.

The landlord testified regarding the following facts. The tenant still has not provided the required income information to the landlord. The tenant has continued to pay full rent to the landlord after the effective date of the notice and has been issued "use and occupancy only" receipts by the landlord from December 2020 to March 2021. The tenant's last application for rent subsidy was received by the landlord on September 20, 2019. Section 7 of the parties' tenancy agreement indicates that an annual income review has to be done in order for the tenant to qualify for a rental subsidy and the tenant has to provide proof of income and an assets declaration.

The landlord stated the following facts. The landlord is a public housing body funded by the provincial government through the provincial housing body. The tenant has to show that she is low income or receiving help from the government, in order to qualify for the subsidized rental unit. The landlord has to ensure that the tenant's income does not exceed the housing income limit, which is \$66,500.00 for the tenant's two-bedroom rental unit.

Analysis

Sections 49.1(1) and (2) of the *Act* state the following:

49.1(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.

Based on a balance of probabilities and for the reasons outlined below, I find that the landlord met its onus of proof to show that the 2 Month Notice was issued for a valid reason. I accept the landlord's undisputed evidence, as the tenants did not attend this hearing.

I find that the landlord is a public housing body and the tenants occupied the rental unit and received a rental subsidy based on income eligibility. The rental subsidy is indicated in the parties' tenancy agreement. I find that the tenant agreed and had notice that the rental subsidy was based on proof of income eligibility, the failure of which could result in an end to this tenancy, as noted in section 7 of the parties' tenancy agreement. The tenant initialled each page of the tenancy agreement, signed it at the end, and signed a separate checklist indicating that she understood that she was required to provide proof of income on a yearly basis to the landlord.

I find that the last rental subsidy application and proof of income from the tenant was received by the landlord in September 2019. No proof of income information was received from the tenant in 2020, which does not comply with the annual income review. The tenant was required to provide these documents to the landlord by October 1, 2020. The tenant was given four warning letters by the landlord on June 1, July 16, August 18, and September 24, 2020 to provide the information by October 1, 2020. The landlord had verbal conversations with the tenant in September and November 2020 to remind her of these requirements. The landlord gave another letter to the tenant on November 25, 2020, after the notice was issued. I find that the tenant failed to provide proof of income to the landlord for 2020, by October 1, 2020, despite numerous verbal and written warnings from the landlord. Therefore, the landlord cannot determine whether the tenants are eligible for a rental subsidy, and the rental unit can only be occupied by tenants who qualify for the rental subsidy.

I find that the landlord did not waive its right to pursue the 2 Month Notice by accepting rent from the tenants after the effective date of the notice of November 30, 2020. The landlord issued use and occupancy only receipts to the tenant from December 2020 to March 2021 and provided a copy of one such receipt from January 2021. I find that the landlord did not withdraw the 2 Month Notice, did not cancel or withdraw its application, and continued to pursue an eviction of the tenants at this hearing.

The tenants have not made an application pursuant to section 49.1(6) of the *Act*, within fifteen days of being deemed to have received the 2 Month Notice. In accordance with section 49(9) of the *Act*, the failure of the tenants to take this action within fifteen days led to the end of this tenancy on November 30, 2020, the effective date on the 2 Month Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by November 30, 2020.

As this has not occurred, I find that the landlord is entitled to an **order of possession effective at 1:00 p.m. on March 31, 2021**, pursuant to section 55 of the *Act*. During the hearing, the landlord said that she was seeking an order of possession effective on March 31, 2021. The landlord stated that the tenants paid rent for March 2021 to the landlord. I find that the landlord's 2 Month Notice complies with section 52 of the *Act*.

As the landlord was successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord **effective at 1:00 p.m. on March 31, 2021**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$100.00 from the tenants' security deposit of \$400.00, in full satisfaction of the monetary award for the filing fee.

The remainder of the tenants' security deposit of \$300.00 is to be dealt with at the end of this tenancy in accordance with section 38 of 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 *Residential Tenancy Act*.

Dated: March 05, 2021

Residential Tenancy Branch