



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPT

Introduction

On February 22, 2021, the Tenant applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 54 of the *Residential Tenancy Act* (the “Act”).

The Tenant attended the hearing. S.T. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by hand on February 26, 2021. S.T. confirmed that the Landlord received this package. Based on the undisputed, solemnly affirmed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Tenant’s Notice of Hearing and evidence package. As such, I have accepted the Tenant’s evidence that was submitted with this package, and it will be considered when rendering this Decision.

The Tenant advised that he served additional evidence to the Landlord by hand on March 1, 2020 and March 4, 2020. S.T. advised that the Landlord only received some of this additional, late evidence. However, she advised that she was prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this Decision.

S.T. advised that the Tenant was served the Landlord’s evidence by hand on February 26, 2021. The Tenant confirmed that he received this evidence, that he had reviewed it, and that he was prepared to respond to it. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2019 for unit #10, that economic rent was established at \$743.00 per month, and that it was due on the first day of each month. A security deposit of \$371.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant advised that he qualified for subsidized housing in unit #10 and that he had one son living with him. He contacted the Landlord in November 2020 because unit #17 would soon be available. This was a bigger unit and would be more suitable for him because he would be gaining custody of a second son. As such, he wanted to start the process of qualifying for the bigger unit. He completed the paperwork and he was advised in January 2021 that he could move mid-February 2021. After an incident that happened between his guest and another resident of the building, the Landlord contacted him on February 16, 2021 and advised him that he would no longer be able to move into unit #17.

He referenced two letters submitted as documentary evidence from the Ministry of Children and Family Development, dated June 22, 2020 and June 24, 2020. It is his opinion that these letters confirm that his second son would be living with him. He also cited a Judgement dated February 19, 2021, that was submitted as documentary evidence, that entitled him to custody of his second son. It is his belief that the Landlord agreed to rent unit #17 to him. As he used this address in his application for the custody case, and as the Judge in this case ordered that the children must live with the Tenant,

it is his belief that he would be breaching the Judge's orders if he were not granted possession of unit #17.

S.T. confirmed that the Tenant did fill out a request to transfer units on November 25, 2020; however, the Tenant did not qualify to transfer to a larger unit as he did not provide any written proof that he had custody of his second child at that time. She stated that an applicant can only qualify for a transfer once the correct documentation is provided. At that point, the applicant will go onto a waiting list for the next available unit and the transfer of units is only formalized when a new tenancy agreement is signed.

She stated that there was some confusion about him moving into unit #17. She submitted that the Tenant observed the resident of unit #17 moving out, and he falsely assumed that he would be given that unit; however, the Landlord cannot guarantee a specific unit as they can only provide whatever unit that happens to be available at the time. Furthermore, she referenced an email dated February 16, 2021 from a representative of the Landlord stating that the transfer to another unit cannot be facilitated because the Tenant has still not provided the necessary documentation to qualify for a bigger unit. She also referenced an email dated February 18, 2021 to the Tenant where she indicated that the transfer cannot be completed as he has not submitted the proper documentation to qualify for the bigger unit. These emails were submitted as documentary evidence.

She stated that the Tenant never ended his tenancy in unit #10, that the Tenant never signed a tenancy agreement for unit #17, that the Tenant did not provide any evidence that unit #17 was rented to him, and that the only time he provided the required documentation regarding his second son living with him was when he served a copy of the Judgement to the Landlord this past week. Now that the Landlord has this documentation, the Tenant would likely qualify for a bigger unit, and will be placed on the waiting list for the next available unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 54(1) and (2) of the *Act* states that a Tenant who has entered into a tenancy agreement with a Landlord may request an Order of Possession of the rental unit by

making an Application for Dispute Resolution, and that the Director may grant an Order of Possession to a Tenant under this Section before or after the date on which the Tenant is entitled to occupy the rental unit under the tenancy agreement.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

When reviewing the totality of evidence before me, I accept that in this type of subsidized housing, tenants are housed in appropriately sized units which fit their needs, and this is based on the number of occupants permitted. Given the nature of this type of housing, I acknowledge that any changes must be applied for by the Tenant and that accompanying documentation must be submitted with the application to request a bigger or smaller unit.

While it is the Tenant's belief that the Ministry letters of June 22, 2020 and June 24, 2020 confirm at that point that his second son currently lived with him, when reviewing these documents, I do not find any language in those documents corroborating that the second son was living with him at that point. In fact, the Tenant confirmed during the hearing that it did not explicitly indicate that in those letters. As such, I am not satisfied that there was any document proving that the Tenant's second son would be living with him prior to receiving the Judgement dated February 19, 2021.

Furthermore, there is insufficient evidence that the Tenant's tenancy in unit #10 was ever ended in accordance with the *Act*, and the Tenant has not submitted any evidence to substantiate that a tenancy agreement was ever signed for unit #17. The consistent evidence before me is that the Landlord required the Tenant to provide documentation substantiating that his household composition would increase, prior to approving a transfer to a bigger rental unit. However, the only time the Tenant provided this documentation was by way of the Judgement. As such, I am satisfied that the Tenant has only recently provided the necessary documentation required to qualify for a larger rental unit.

Consequently, I do not find that the Tenant qualified, at the time of making this Application, for the rental unit that he is seeking an Order of Possession for. I am also not satisfied that a tenancy for unit #17 was ever entered into. Ultimately, I find that the Tenant is not entitled to an Order of Possession and I dismiss his Application without leave to reapply.

Conclusion

Based on my findings above, I dismiss the Tenant's Application 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: March 5, 2021

Residential Tenancy Branch