



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNQ, LRE, OLC LRE, CNC, LAT**

Introduction

This hearing dealt with two applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of the landlord’s 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the “2 Month Notice”) pursuant to section 49.1;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47; and
- authorization to change the locks to the rental unit pursuant to section 70.

The hearing occurred over the span of two days June 18, 2021 and June 25, 2021. An Interim Decision adjourning the matter to be reconvened on this date was issued on June 18, 2021 and this decision should be read in conjunction with the earlier Interim Decision.

The tenant attended the hearing on both days. The tenant was assisted by a friend who acted as advocate on June 18, 2021 and appeared without assistance on June 25, 2021. The landlord attended the June 18, 2021 hearing date but did not attend the June 25, 2021 hearing.

The teleconference line remained open for the duration of the hearing. The Notice of Reconvened Hearing was confirmed to contain the correct information and the Branch

records show that the Notice was sent to both parties at the email address confirmed in the earlier June 18, 2021 hearing.

Issues

Should the 2 Month Notice and 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to any of the other relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The background details of this tenancy are not in dispute. This periodic tenancy began in 2019. The rental unit is a three-bedroom suite managed by a non-profit organization of which the named landlord is an employee. The tenant began occupying the rental unit with her 2 dependent children at the outset of the tenancy. Another governmental entity has taken the tenant's 2 children out of the tenant's care in the spring of 2020.

The landlord submits that pursuant to Canada's National Occupancy Standards the tenant is now over-housed in the rental unit as they are residing there alone without her children. The landlord issued a 2 Month Notice to End dated February 24, 2021 with an effective date of April 30, 2021.

The parties also testified that a 1 Month Notice to End Tenancy for Cause dated March 28, 2021 was served on the tenant on March 29, 2021. The reason provided on the notice for the tenancy to end is that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Neither party provided substantive submissions regarding the 1 Month Notice.

The tenant filed their present application to dispute the 2 Month Notice on March 10, 2021. The tenant submits that there was an appearance before the courts of British Columbia on June 23, 2021 which resulted in steps being taken to return the tenant's children into their care. The tenant was uncertain of the timeline for the return of the

children but submits that they believe that both children will be residing full-time with the tenant in approximately eight weeks.

In the June 18, 2021 hearing the landlord testified that they have worked with the tenant in attempting to have them requalified for the subsidized housing unit since April 2020 when the children were removed from the tenant's care. The landlord submits that the tenant failed to participate in a meaningful way to requalify for the rental unit and no further extension of time to allow the tenant to requalify was appropriate.

Analysis

Residential Tenancy Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

The tenant provided little submissions on the portions of their claim pertaining to issues other than the 2 Month Notice. The tenant gave little evidence regarding their reasons for seeking an order of compliance or authorization to change the locks to the rental unit or limit the landlord's right to access the rental unit. In the absence of cogent submissions I find that the tenant has not met their evidentiary onus on a balance of probabilities for these issues and consequently dismiss this portion of the tenant's application without leave to reapply.

In accordance with section 47 of the *Act*, a tenant may dispute a 1 Month Notice to End a Tenancy for Cause by filing an application for dispute resolution within 10 days after the tenant receives the notice. In the present circumstance the tenant submits they received the 1 Month Notice dated March 28, 2021 on March 29, 2021 and filed their application for dispute on the same date.

When a tenant applies to dispute a notice the onus shifts to the landlord to establish on a balance of probabilities that the tenancy should end for the reasons cited on the notice. The landlord provided little evidence or submissions in support of the 1 Month

Notice. Consequently, I find that the landlord has not met their onus and allow the tenant's application to cancel the 1 Month Notice.

Pursuant to section 49.1 of the *Act*, a tenant may dispute a notice to end a periodic tenancy for ceasing to qualify for the rental unit by filing an application within 15 days after the tenant receives the notice. When a tenant applies to dispute a 2 Month Notice the onus lies with the landlord to show on a balance of probabilities that the tenancy should end for the reasons provided on the notice.

In the present circumstances the tenant received the 2 Month Notice on February 24, 2021 and filed their application for dispute resolution on March 10, 2021, within the timelines established under the *Act*.

The landlord attended the first day of the hearing on June 18, 2021 and provided undisputed evidence regarding the occupancy qualification for the rental unit, the tenant's present family status and how the tenant has not qualified for the three-bedroom subsidized rental unit since their children were taken out of her care in April, 2020.

The landlord did not attend the reconvened hearing on June 25, 2021 where the tenant provided undisputed testimony stating that as a result of their court appearance on June 23, 2021 there was a plan and schedule for the tenant's children to be released into their care.

Residential Tenancy Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the present circumstances, the landlord has made submissions in support of the 2 Month Notice at the June 18, 2021 hearing. By not attending the reconvened hearing on June 25, 2021 the landlord was not present to cross-examine the tenant or dispute their submissions.

Based on the totality of the evidence I find that the landlord has not met their evidentiary onus on a balance of probabilities to demonstrate that the tenancy should end for the

reasons provided on the 2 Month Notice. While I accept the undisputed evidence that the tenant met the definition of over-housing condition as set out in the tenancy agreement and the landlord's policy guidelines during the period that the tenant's children were out of their care, I find that the tenant has provided testimonial evidence that the situation is being remedied where they once again qualify for the rental unit.

I am not satisfied that the tenant remains disqualified from residing in the rental unit given their testimony about recent decisions made by the courts. Under the circumstances I find that while the tenant may have not qualified for the rental unit at one point, I find insufficient evidence that the living arrangements have not been further altered to requalify the tenant for the rental unit in accordance with the policies and tenancy agreement. Consequently, as I find that the landlord has not met their evidentiary onus on a balance of probabilities to demonstrate that the reasons provided on the 2 Month Notice are valid, I allow the tenant's application and cancel the notice.

This tenancy continues until ended in accordance with the Act.

Conclusion

The tenant's application to cancel the 1 Month Notice of March 28, 2021 and 2 Month Notice of February 24, 2021 are allowed. Those notices are cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The balance of the tenant's application is dismissed without leave to reapply

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: June 18, 2021

Residential Tenancy Branch