



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSOCIATION -
VERNON 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 April 06, 2021 (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 March 23, 2021 (the "Notice").

The Tenant appeared at the hearing with the Advocate. The Agents for the Landlord, E.M. and W.W., appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted as well as the oral testimony and submissions 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

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The parties agreed the tenancy started in June of 1998. The tenancy is a month-to-month tenancy. Rent is due on or before the first day of each month. The parties agreed rent is currently \$1,056.00 per month. The parties agreed the Tenant paid a \$350.00 security deposit.

The Notice was submitted as evidence. The Notice has an effective date of May 31, 2021. The grounds for the Notice are:

1. The tenant no longer qualifies for the subsidized rental unit.

The Tenant did not take issue with the form or content of the Notice when asked.

The parties agreed the Notice was served and received March 23, 2021.

E.M. provided the following testimony and submissions on behalf of the Landlord.

Page four of the tenancy agreement refers to the Tenant being eligible to occupy the rental unit based on household composition. The tenancy agreement at page four states that any change in household composition and household income is material and that the Landlord can serve a notice to end tenancy if the Tenant no longer satisfies the eligibility criteria. Previously, the Tenant no longer qualified for the rent subsidy and the Tenant started paying market rent. The Notice was issued due to the Tenant's household composition.

The policies and procedures that apply to the rental unit state:

In the case of "empty nest" situations (the last child has left home) following a June graduation, the tenant will be advised at the end of that fiscal year...that they have 60 days notice under Section 47 as above. In this way, the society provides time for the child to enroll & be accepted in post secondary education program.

Two of the Tenant's children who live in the rental unit have reached the age of 21. The policies and procedures that apply to the rental unit state:

Dependents who have reached the age of twenty-one and are not attending school will be requested to vacate...

The Advocate for the Tenant provided the following submissions.

The rental unit was converted to a market rental unit in 2015 when the Tenant started paying market rent. The rental unit is not a “subsidized rental unit” as that term is defined in section 49.1 of the *Residential Tenancy Act* (the “Act”). The Landlord was not permitted to issue a notice to end tenancy pursuant to section 49.1 of the Act. The Landlord should have changed the tenancy agreement when the Tenant started paying market rent.

The number of occupants in the rental unit has not changed since the start of the tenancy and has remained at four occupants. The tenancy agreement talks about changes to household composition but does not clarify what this is. The Tenant’s daughters have reached 21 years old but all four people living in the rental unit are listed on the tenancy agreement. The household composition has not changed. The Tenant has complied with section 14 of the tenancy agreement.

The policies and procedures referred to by the Landlord are not law. The Tenant did not sign the policies and procedures referred to by the Landlord.

The Tenant testified that they were given the policies and procedures referred to by the Landlord but that they never agreed to them. The Tenant submitted that a document provided with the heading “Chapter 1 Overview” shows that the policies and procedures referred to by the Landlord do not apply to rental units when the tenant is paying market rent.

In reply, E.M. testified that the policies and procedures referred to apply to all rental units whether the tenants are paying market rent or not. E.M. testified that the “Chapter 1 Overview” document submitted does not apply to the Landlord and their rental units, it is general information obtained from the BC Housing website.

E.M. sought an Order of Possession effective October 31, 2021.

Both parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

Section 49.1 of the *Act* states:

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.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice...

Section 14 of the tenancy agreement states:

- (a) The landlord has determined that the tenant is eligible to occupy the rental unit based on specific eligibility criteria including, but not limited to, the tenant's household composition and household income...
- (c) Any change in the tenant's household composition and household income is material and may result in the tenant no longer satisfying the landlord's eligibility criteria for the rental unit and, in such event, the landlord may serve a notice to end the tenancy.

The parties agreed the Notice was served and received March 23, 2021. The dispute was filed April 06, 2021, within time.

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

I am satisfied the rental unit is a "subsidized rental unit" as that term is defined in section 49.1(1) of the *Act* for the following reasons. I find based on section 14 of the tenancy agreement that the Tenant was required to demonstrate that they met eligibility criteria related to household composition and household income before entering into the tenancy agreement in relation to the rental unit. I find "household composition" is a "similar criterion" as income, number of occupants and health because it relates to the occupants of the rental unit as does "number of occupants" and is a similar criterion to "number of occupants".

I do not find that the Tenant paying market rent as of 2015 changes the nature of the rental unit as a "subsidized rental unit" pursuant to section 49.1(1) of the *Act*. I find the definition of "subsidized rental unit" relates to the rental unit itself and that it is not relevant that the Tenant started paying market rent during the tenancy. The fact that the Tenant started paying market rent during the tenancy does not change that the Tenant was required to demonstrate that they met eligibility criteria related to household composition and household income before entering into the tenancy agreement in relation to the rental unit.

In regards to section 49.1(2) of the *Act* and the requirement "if provided for in the tenancy agreement", section 14 of the tenancy agreement states that the Landlord may end the tenancy if the Tenant ceases to qualify for the rental unit in relation to household composition and household income.

I am satisfied the Tenant has ceased to qualify for the rental unit. I accept that “household composition” encompasses the age of the Tenant’s children who are living in the rental unit. I find that “composition” is a broad term that refers to the general makeup of the household. There were not four people over the age of 21 living in the rental unit when the Tenant entered into the tenancy agreement as there presently are. I am satisfied the Tenant’s household composition has changed since they first entered into the tenancy agreement. I also note that the tenancy agreement specifically includes the birth dates of the individuals living in the rental unit which supports that the age of the occupants is material.

In relation to the policies and procedures referred to by the Landlord regarding dependents who reach the age of 21, I am satisfied these apply to the rental unit and that the Landlord is entitled to enforce them.

I do not accept that the “Chapter 1 Overview” document supports that the policies and procedures referred to by the Landlord do not apply when a tenant is paying market rent because the document relates to calculating the “Tenant Rent Contribution” which is a different issue than dependents who are 21 years old being required to vacate.

The Tenant acknowledged receiving the policies and procedures and therefore I am satisfied the Tenant was aware of them. The Tenant entered into the tenancy agreement knowing that the policies and procedures applied to the rental unit and therefore I am satisfied the Tenant agreed to them. The tenancy agreement specifically states that household composition is an eligibility criterion and that changes are material and may result in the tenancy ending. The Tenant therefore agreed to the tenancy being subject to criteria relating to household composition which I am satisfied the policies and procedures address.

I have reviewed the Notice and find it complies with section 52 of the *Act* as required by section 49.1(4) of the *Act*.

Given the above, I am satisfied the Landlord had grounds to issue the Notice and I uphold the Notice. Given this, the dispute of the Notice is dismissed without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the Notice complies with section 52 of the *Act*. I have dismissed the Tenant's dispute of the Notice and upheld the Notice. Therefore, the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlord is issued an Order of Possession effective at 1:00 p.m. on October 31, 2021.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective at 1:00 p.m. on October 31, 2021. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme 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: August 11, 2021

Residential Tenancy Branch