



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'akola Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession because the tenant no longer qualifies for subsidized housing, and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the application, notice of this hearing and all evidentiary material on June 1, 2021 and has provided a copy of a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt.

All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this month-to-month tenancy began in August, 2017 with a partner, and then the partner was removed

and a new tenancy agreement commencing October 1, 2019 was signed by the parties, and the tenant still resides in the rental unit. Market rent of \$700.00 per month is subsidized and the tenant's current share is \$282.00 payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy in 2017 the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a townhouse in a family complex, and a copy of the latest tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on February 10, 2021 the tenant was served with a Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit (the Notice) by registered mail. A copy of pages 1 and 2 only of 4 pages of the Notice has been provided for this hearing. It is dated February 10, 2021 and contains an effective date of vacancy of April 30, 2021. The reason for issuing it states: The tenant no longer qualifies for the subsidized rental unit.

The landlord has also provided letters that were given to the tenant respecting a plan to have the tenant's children return to the tenant's care, and that the landlord was only able to provide housing for 6 months while the tenant worked toward the return of the tenant's child. The landlord testified that the tenant resides alone in a 3 bedroom unit which is for families, but did not know where in the tenancy agreement such a term exists.

A Proof of Service document has also been provided for this hearing which indicates that another agent of the landlord served the Notice, but the agent who attended this hearing does not know how many pages were served.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice.

Analysis

Where a landlord applies for an Order of Possession the landlord must be able to demonstrate that all pages of the Notice were given to the tenant in the approved form. In this case, the landlord has only provided 2 of the 4-page approved form for this hearing, and the landlord who attended the hearing has no knowledge of how many pages were served on the tenant.

I also note that the landlord was provided with an email from the Residential Tenancy Branch with instructions to serve the tenant with the Hearing Package by May 31, 2021,

which is within 3 days as required by the *Act*, however the landlord did not serve the tenant until June 1, 2021.

In the circumstances, I am not able to find that the landlord has complied with the *Act*, and I dismiss the landlord's application in its entirety.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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: August 08, 2021

Residential Tenancy Branch