



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the Two Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the "Two Month Notice").

The tenants, their agent/translator (the "agent") and the building manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the tenants personally served the building manager with this application for dispute resolution on or around February 6, 2021. I find that this application for dispute resolution was served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The tenants' application for dispute resolution lists the building manager as the landlord. The landlord named on the tenancy agreement and notice to end tenancy that were submitted into evidence was not named as a landlord in this application for dispute resolution. Pursuant to section 64 of the *Act* I amend the tenants' application for dispute resolution to state the correct landlord's name.

Issues to be Decided

Are the tenants entitled to cancel the Two Month Notice to End Tenancy because Tenant Does not Qualify for Subsidized Rental Unit, pursuant to section 49.1 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and building manager's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 29, 2009 and is currently ongoing. Monthly rent in the amount of \$320.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subsidized rent is based on income with a minimum amount payable if no income is earned. The subject rental property is a two-bedroom unit.

The building manager testified that the landlord is a housing society that has an agreement regarding the operation of the subject rental property with the BC Housing Management Commission. This was not disputed by the tenants.

Section 8(a)(i) of the tenancy agreement states:

"BC Housing" means British Columbia Housing Management Commission

Section 9 of the tenancy agreement states:

The landlord has entered into an agreement with BC Housing designating the residential property as housing for low and moderate income tenants.

Section 14 of the tenancy agreement states in part:

The landlord has selected the tenant on the basis of the number of occupants among other criteria. The tenant agrees that only those persons listed as tenants and occupants, including those listed in the List of Additional Tenants and

Occupants, if any, are allowed to live in the rental unit during the term of this tenancy, unless the landlord otherwise consents in writing. Any change in the number of occupants is material and of great importance to the landlord and entitles the landlord at its discretion to end this tenancy agreement. The tenant agrees to notify the landlord promptly of any change in the occupants....

Both parties agree that the landlord personally served tenant M.A. with the Two Month Notice on January 27, 2021.

The building manager testified that the tenants were originally granted a two-bedroom subsidized unit as there were two persons residing at the subject rental property. The building manager testified that tenant Y.A. has moved out and so tenant M.A. no longer qualifies for a two-bedroom unit. Tenant Y.A. testified that he has not moved out of the subject rental property. The building manager testified that each year the landlord completes an "annual review" to determine the rent payable by the tenants and the size of unit the tenant(s) are eligible to live in. The building manager entered into evidence a letter dated September 22, 2020 which states:

Thank you for submitting your Application for Rent Subsidy. During the Annual Review process it came to our attention that your son is now living elsewhere. Since you are **overhoused** I have included a Transfer Request form which you must complete and submit to BC Housing so they may transfer you to a suitable housing. We will require proof that you have submitted the application to BC Housing or are taking steps to move to a one bedroom unit by **November 30, 2020**.

Enclosed is your copy of BC Housing's Calculation of Rent Contribution Details for your records. Your new housing charge effective **November 1st, 2020** will be as follows:

Monthly Rent Contribution: \$320

Your rent contribution will be reviewed by BC Housing. If there is any change to the amount you must pay, a copy of the revised Application for Rent Subsidy form showing the changed amount will be provided.

Please remember that any changes in the number of people residing in the unit must be reported as soon as possible. Please also report any permanent

decreases in your household income so that your rent contribution can be adjusted, if needed.

Attached to the September 22, 2020 letter is a calculation of rent contribution details sheet in which only tenant M.A. is listed and the rent calculation is based only on tenant M.A.'s occupancy of the subject rental property.

Both parties agree that while the September 22, 2020 letter states "Thank you for submitting your Application for Rent Subsidy", the tenants did not fill out the rent subsidy form required for the annual review. Tenant M.A. testified that he did not fill out the rent subsidy form because it was too complicated. Tenant M.A. testified that he did not think the rent contribution sheet was incorrect because he believed that since tenant Y.A. is in school, he does not have to pay any rent. The building manager testified that even if tenant Y.A. is in school, he still has to pay \$150.00 per month, in addition to tenant M.A.'s contribution.

The building manager testified that he has offered tenant M.A. two different one-bedroom units but tenant M.A. has refused stating they are too small. Tenant M.A. testified that the one-bedroom units are too small for two people.

The tenants entered into evidence the following documents listing the subject rental property as tenant Y.A.'s address:

- Tenant Y.A.'s driver's license expiring September 27, 2022,
- Screen shot of tenant Y.A.'s student aid contact information,
- Tenant Y.A.'s 2019 school tax receipt,
- Screen shot of tenant Y.A.'s online bank profile,
- Screen shot of tenant Y.A.'s telephone account,
- Tenant Y.A.'s credit card statement for December 4, 2020, and
- Tenant Y.A.'s 2019 vehicle registration.

The building manager testified that the above documents just prove that the tenant once lived at the subject rental property and has not updated his address information. The building manager testified that he knows the tenant moved out because tenant Y.A. verbally told him so. Tenant Y.A. testified that he did not tell the building manager that he moved out.

Tenant M.A. testified that he attempted to sort out the error regarding who is living at the subject rental property with BC Housing but they kept referring him back to the building manager who will not listen.

The building manager testified that the video surveillance at the subject rental property would prove that Y.M. does not live at the subject rental property. No video evidence was provided by the landlord.

Analysis

Section 49.1(1) and section 49.1(2) 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.

Section 3.1 of the Residential Tenancy Branch Regulations (the "Regulation") states:

3.1 The persons and organizations set out in section 2 (a) to (h) of this regulation are prescribed as public housing bodies for the purposes of section 49.1 of the Act.

Section 2(a) to (h) of the Regulation states:

(a) the British Columbia Housing Management Commission;

(b) the Canada Mortgage and Housing Corporation;

(c) the City of Vancouver;

(d) the City of Vancouver Public Housing Corporation;

(e) Metro Vancouver Housing Corporation;

- (f) the Capital Region Housing Corporation;
- (g) any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:
 - (i) the government of British Columbia;
 - (ii) the British Columbia Housing Management Commission;
 - (iii) the Canada Mortgage and Housing Corporation;
 - (iv) a municipality;
 - (v) a regional district;
- (h) any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

Pursuant to the undisputed testimony of the building manager and the tenancy agreement entered into evidence, I find that the landlord meets the definition of a public housing body and that the subject rental property is a subsidized rental unit as defined by section 49.1 of the *Act*. The landlord was therefore permitted to serve the tenants with the Two Month Notice, but still must prove the reason for ending the tenancy

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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; however, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In this case, the effect of Rule 6.6 of the Residential Tenancy Branch Rules of Procedure is that the landlord must prove, on a balance of probabilities, the reasons the landlord wishes to end the tenancy. The building manager testified that tenant M.A. is being evicted because he not longer qualifies for a two bedroom because tenant Y.A.

moved out. Therefore, the landlord must prove, on a balance of probabilities, that tenant Y.A. moved out of the subject rental property.

Tenant Y.A. entered into evidence numerous documents that support tenant Y.A.'s testimony that he resides at the subject rental property. While the date of all of these documents are not entirely clear, I find the tenants' evidence regarding where he is living to be more persuasive than that of the building manager. I note that the building manager did not provide the video evidence which he testified would prove that tenant Y.A. does not live at the subject rental property.

I find the September 22, 2020 letter to be unhelpful as both parties agree the application for rent subsidy mentioned in that letter was not completed by the tenants. The September 22, 2020 letter states "it came to our attention that your son is now living elsewhere"; however, it is not clear how this information came to the attention of the landlord or if that information is accurate.

The building manager testified that tenant Y.A. personally informed him that he moved out, tenant Y.A. denies this. When the equally probable testimony of two parties' conflicts, the party making the claim has not met the burden of proof and the claim fails. I find that the building manager has not proved, on a balance of probabilities, that tenant Y.A. told him that he moved out. I find that the landlord has not proved, on a balance of probabilities, that tenant Y.A. moved out of the subject rental property.

As the landlord has not proved the reasons for ending the tenancy, I cancel the Two Month Notice. This tenancy will continue in accordance with the *Act*.

Conclusion

The Two Month Notice is cancelled.

This tenancy will continue in accordance with 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: August 09, 2021

Residential Tenancy Branch