



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, OLC, FFT

Introduction

The Tenants (hereinafter the “Tenant”) filed an Application for Dispute Resolution on seeking a cancellation of the Two-Month Notice to End the Tenancy where the Tenant Does Not Qualify for a Subsidized Rental Unit (the “Two-Month Notice”). They also applied for an order that sets out the Landlord’s obligation to comply with the legislation and/or tenancy agreement, and a return of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 28, 2022. Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. At the outset of the hearing, both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the Tenant entitled to an order that the landlord cancel or withdraw the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

Neither party provided a copy of the tenancy agreement; however, the Landlord spoke to the basic details which the Tenant confirmed. The rent amount of \$1,200 has not increased since the beginning of the tenancy in 2017. In this arrangement, where the rental unit is subsidized, the rent is calculated based on the number of occupants and each party's annual income.

The Landlord issued the Two-Month Notice on December 9, 2021. They advised the Tenant by letter on that date of the prior reminder of the requirement to complete the declaration of income and assets that is required for the calculation of rent. The Landlord identified this as a breach of a material term of the tenancy agreement. The Landlord issued the Two-Month Notice in line with s. 49.1 of the *Act*.

The Two-Month Notice indicated "the tenant no longer qualifies for subsidized rental unit" on page 2 where needed. The end-of-tenancy date on the document was February 28, 2022. The Tenant confirmed the Landlord delivered this document by hand on December 9.

The Landlord explained the requirement for each Tenant to provide annual income information when required. The Landlord provided copies of their letters to the Tenant asking for this information consistently since August 3, 2021. Ideally the Landlord needs the rent calculation by December 1. The communication included a checklist of what information to include when providing that to the Landlord. The Landlord followed the initial letter with two more letters, the second of which provided the final notice to the Tenant and set out s. 49.1 of the *Act*.

Additionally, the Landlord provided the record of their email communication to the Tenant on this issue. The Tenant's end-of-claim date for income assistance was shown to be "November 1, 2021", as on the "My Service Canada Account" documents provided to the Landlord by the Tenant, appearing in the Landlord's evidence. In the hearing the Landlord reiterated they did not receive this information as required.

The Tenant at first submitted that they checked the instructions repeatedly before providing this information to the Landlord as required. When pressed by the Landlord on specifics, the Tenant admitted they had not submitted new updated information as required, in light of their employment situation changing more recently.

With this admission, the Landlord requested an Order of Possession, given that the Tenant no longer qualifies for subsidized housing with the lack of required information being the identified issue. The Landlord stated they would not serve the Order of Possession if the Tenant can

provide the information need by the Landlord – this is a record of employment and bank statements.

The parties spent the closing part of the hearing discussing the Tenant's provision of required information.

Analysis

The *Act* s. 49.1 sets out that a landlord may end a tenancy where a tenant ceases to qualify for the rental unit. A "subsidized rental unit" is defined as that which is "occupied by a tenant who was required to demonstrate that the tenant . . . met eligibility criteria related to income . . .". From the Landlord's testimony and detailed explanation, I am satisfied this must happen on a regular basis. Should a tenant fail to provide this information, a landlord may rightfully conclude that they no longer qualify for the subsidized rental unit.

The *Act* s. 49.1(5) states that within 15 days of receiving such a Two-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the Landlord issued the Two-Month Notice pursuant to s. 49.1 and I accept the Landlord's evidence that they served this document to the Tenant on December 9, 2021.

The *Act* s. 52 provides:

- To be effective, a notice to end a tenancy must be in writing and must
 - (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) . . . state the grounds for ending the tenancy,
 - . . . and
 - (e) when given by a landlord, be in the approved form.

I find the Two-Month Notice bears sufficient detail as to comply with the requirements of s. 52 regarding form and content.

I find the details provided by the Landlord – referring to their notices and communication to the Tenant in the past – validate the Landlord's issuance of the Two-Month Notice. The Tenant in the hearing admitted they had not provided the required information to the Landlord. This required information was set out for the Tenant in the hearing, and they stated their intention in completing that requirement very soon.

I find the Two-Month Notice issued by the landlord on December 9, 2021 complies with the requirements for form and content set out in s. 52 of the *Act*.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*. By this provision, I find the Landlord is entitled to an Order of Possession.

Because the Tenant was not successful in their Application, I find they are not eligible for reimbursement of the \$100 Application filing fee. The Tenant's request for the Landlord's compliance with the legislation and/or the tenancy agreement was based on the same ground as their challenge of the Landlord ending the tenancy; for this reason, I dismiss this portion of the Tenant's claim given my findings above.

Conclusion

Under s. 55 of the *Act*, I grant an Order of Possession effective two days after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: March 30, 2022

Residential Tenancy Branch