



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST UNITED CHURCH SOCIAL HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNQ**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice - Tenant does not Qualify for Subsidized Rental Unit ("Two Month Notice") pursuant to section 49.

This hearing began on March 15, 2022, before me. The tenant attended with the advocate PD ("the tenant"). DA attended as agent for the landlord ("the landlord"). Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Both parties completed their presentation of evidence during the teleconference hearing on March 15, 2022. As the scheduled hearing time was one hour, the hearing was adjourned after this time by consent to allow the participants to submit Written Submissions summarizing their arguments.

In accordance with the terms of the Interim Decision of March 15, 2022, each party has submitted Written Submissions.

Further to the terms of the Interim Decision, the submission of evidence is now complete.

Issue(s) to be Decided

Is the tenant entitled to a cancellation of the Two Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties submitted considerable written and oral evidence. Not all this evidence is referenced in the Decision I do not address every argument of the parties. Only significant facts and arguments in regards to my findings and Decision are referenced.

The landlord testified that the tenant no longer qualifies for subsidized housing and requested an Order of Possession pursuant to a Two Month Notice. The tenant requested that the Notice be cancelled, and the tenancy continue.

Tenancy Agreement

The landlord testified as follows regarding their provision of housing and the tenancy agreement with the tenant.

The landlord testified the unit is a subsidized rental unit pursuant to section 49.1 of the *Act*.

The landlord is a charitable organization providing subsidized housing. They have an agreement with the British Columbia Housing Management Commission (the "Commission") which subsidizes the cost of the housing and restricts the use of the property to social housing.

The tenant's tenancy began on July 1, 2012, at a monthly rent of \$860.00. The cost of the housing is subsidized by the Commission.

The named tenants in the agreement are GM, the tenant in this application, and AM, his son. The unit has 2-bedrooms.

The agreement states in section 7 that any change in the number of tenants and occupants is material to the tenancy and allows the landlord to terminate the tenancy.

A copy of the signed tenancy agreement was submitted. The agreement states as follows (in part and as written, emphasis added):

2. Material Covenants

The Landlord has entered into an operating agreement with the British Columbia Housing Management Commission (the "Commission") restricting the Property for use as social housing. Therefore, covenants in this Tenancy Agreement may be material and of great importance even though the same covenants might be of little or no consequence to a different landlord or to a different tenancy relationship.

7. Occupants

Pursuant to aforementioned agreement with the Commission, the Landlord has selected the Tenant on the basis of the number of Tenants and Occupants and the Tenant's and Occupant's income and assets. Any change in the number of Tenants and Occupants is material and of great importance to the decision of the Landlord to continue or terminate the tenancy. It is a condition of this Tenancy Agreement that in the event of a change in the number of Tenants or Occupants in the Premises the Landlord shall have the right to terminate this Tenancy Agreement. The Tenant agrees to notify the Landlord promptly of any change in the number of Tenants or Occupants in the Premises.

The Property is designated for SENIOR CITIZENS, all Tenants and Occupants must be ADULTS and at least one Tenant must be aged 55 years or older.

13. Notice of Termination

The landlord may terminate this Tenancy Agreement upon any breach of the Tenancy Agreement, or for any matter which is referred to in this Tenancy Agreement as being cause for termination of providing the Landlord with the right to terminate, or as provided in the Act or as otherwise provided by law.

Tenant's Son

The tenant's son AM notified the landlord that AM was moving out of the unit on December 1, 2021.

As the tenant no longer qualified for the subsidized 2-bedroom unit, the landlord issued a Two Month Notice requiring the tenant to move out.

The landlord testified as follows. The tenancy agreement authorizes the landlord to terminate the tenancy because of the change in number of occupants which affects the subsidy from the Commission. The landlord referenced part of section 7 (above, tenancy agreement), as follows:

Any change in the number of Tenants and Occupants is material and of great importance to the decision of the Landlord to continue or terminate the tenancy. It is a condition of this Tenancy Agreement that in the event of a change in the number of Tenants or Occupants in the Premises the Landlord shall have the right to terminate this Tenancy Agreement.

Two Month Notice

The parties agreed the landlord served the tenant with the Two Month Notice on November 3, 2021, under section 49.1(2) of the *Act*. The effective date of the notice was March 31, 2022. The Notice states the following reason, "The tenant no longer qualified for the subsidized rental unit."

A copy of the Notice was submitted which is in the standard RTB form.

Section 55 of the *Act* requires that when a tenant applies seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that complies with section 52 of the *Act*.

Tenant's Submissions

The tenant agreed with the background of the tenancy as testified by the landlord. They agreed the Two Month Notice was served as the landlord testified.

They also assert that the landlord's own policy prohibited the eviction of the tenant, the landlord was acting in bad faith, and it is unethical for the landlord to evict the tenant.

Tenant's Submissions – Landlord's Policy

The tenant asserted that the Commissions Resident Management Guide, a copy of which the tenant submitted, required the landlord to have a fair, consistent policy regarding over-staying by over housed tenants. The tenant claimed that the landlord had a policy which prevented tenants from being evicted until they had been over housed for 12 months. As the landlord issued the Two Month Notice as soon as the tenant was over housed, the tenant asserted that the landlord's policy was unfair and inconsistent.

The landlord asserted they have a fair, consistent policy regarding over housed tenants and rejected the tenant's claims in this regard.

Tenant's Submissions – Bad Faith

The tenant claimed the landlord exhibited bad faith in unfairly disparaging the tenant and alleging the tenant displayed improper or inappropriate behaviour. Therefore, the landlord has underlying motivations in the issuance of the Notice.

The landlord denied any such unfair characterization of the tenant or that the landlord had underlying motivations. The landlord asserted that the only issue was that the tenant was over housed as a single person in a 2-bedroom unit. As a result, the tenant no longer qualified for subsidization of the unit which must be made available to other occupants.

Tenant's Submissions - Unethical to Evict

The tenant submitted that "fairness and ethics" required that the tenant be allowed to remain in the unit until a single bedroom is available for him. The tenant testified they have poor health, and the unit provides accessibility to medical care.

The tenant submitted:

The Arbitrator must be mindful that the granting of a possession order against the Tenant in these circumstances would be not only a miscarriage of justice, but also potentially a death sentence for the Tenant. It is impossible to conceive that Landlord's charitable purposes or ethical grounding would be served by such action.

Analysis

I have reviewed all evidence and testimony before me that I accepted for consideration in this matter in accordance with the Rules of Procedure, including the parties' evidence packages and Written Submissions. However, I refer only to the relevant facts and issues in this decision.

The landlord must now show on a balance of probabilities, that is, it is more likely than not, that the tenancy should be ended for the reasons identified in the Two Month Notice.

As acknowledged by the parties, they entered into a tenancy agreement which began on July 1, 2012, at a monthly rent of \$860.00. The tenants were the applicant and his son, who has since moved out.

I accept the landlord's credible and well-presented evidence in all aspects. I find as follows. The unit is a subsidized rental unit pursuant to section 49.1 (1) which states:

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1) In this section:

"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.

The submitted tenancy agreement provides that any change in the number of tenants and occupants is material to the tenancy and allows the landlord to terminate the tenancy. The son's departure resulted in the tenant being the sole occupant of a 2-bedroom unit; the tenant was therefore over housed and was no longer eligible for a housing subsidy. The landlord was authorized to issue the Notice pursuant to the Act and the tenancy agreement.

I find the landlord served the tenant with the Two Month Notice on November 3, 2021, pursuant to section 49.1 (2) of the Act which states:

(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.

I find the Two Month Notice complies with section 52 of the *Act* as to form and content.

I find as follows. The landlord has properly determined that the tenant ceased to qualify for the rent unit. The landlord has established cause for ending the tenancy of the subsidized rental unit pursuant to section 49.1(2) ,

I therefore dismiss the tenant's claim to cancel the Two Month Notice without leave to reapply.

As I have dismissed the tenant's application to dispute the Two Month Notice, I grant the landlord an Order of Possession pursuant to section 55(1).

As the effective date of the Notice has passed, I grant the landlord an Order of Possession effective on two days' notice.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an Order of Possession effective on two days' notice following service on the tenant.

This Order of Possession must be served on the tenant. The Order may be filed and enforced in the courts of the Province of BC.

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: May 19, 2022

Residential Tenancy Branch