



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHILOH HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ, MNRL-S

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the landlord applied on March 4, 2022 for:

- an order of possession, having served the tenant with a Two Month Notice to End Tenancy – Tenant Does Not Qualify for Subsidized Rental Unit, dated October 5, 2021 (the Two Month Notice); and
- a monetary order for unpaid rent, requesting to retain the security and/or pet damage deposit.

The hearing participants were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant confirmed she received the landlord's Notice of Dispute Resolution Proceeding and evidence, and the landlord confirmed receipt of the tenant's responsive evidence.

Preliminary Matters

Settlement on Unpaid Rent

Pursuant to section 63 of the Act, if the parties settle their dispute during the dispute resolution proceeding, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties reached a resolution regarding the unpaid rent. Both parties agreed to the following binding settlement terms:

- 1) The tenant will pay the landlord \$1,000.00.
- 2) The landlord may keep the tenant's \$450.00 security deposit.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms will settle all monetary aspects of their dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to the landlord's application for a monetary order for unpaid rent, requesting to retain the security and/or pet damage deposit.

In support of the above agreement, I grant the landlord a monetary order for \$1,000.00.

Previous Application

The tenant testified that she applied to dispute the Two Month Notice, but that the hearing did not take place. The tenant testified that the email from the Residential Tenancy Branch informing her of the date of the hearing went into her junk mail, and she did not see it.

The landlord provided the file number for the tenant's application. The file number of that related proceeding is included on the cover page of this decision. Having reviewed the tenant's dispute, I determined that the tenant had applied on January 28, 2022, after the legislated 15-day deadline, to dispute the same Two Month Notice (dated October 5, 2021), and had indicated she required more time to dispute the notice. The decision from the March 7, 2022 hearing states that as no one attended the hearing, the tenant's application is dismissed, without leave to reapply.

I note that the corrected effective date of the Two Month Notice is January 31, 2022, the date of the hearing was March 7, 2022, and that, pursuant to section 66(3) of the Act, an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice.

The landlord did not attend the March 7, 2022 hearing and was not granted an order of possession under section 55(1) of the Act.

Accordingly, I will consider the landlord's application for an order of possession on its merits.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have considered all the documentary evidence and testimony before me, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my related findings are set out below.

The parties agreed on the following particulars of the tenancy. It began December 1, 1992; rent is \$426.00 a month, due on the first of the month; and the tenant paid a security deposit of \$450.00, which the landlord still holds.

The landlord testified they agreed to allow the tenant to pay \$426.00 in rent, noting that the rent would have to be about \$1,200.00 a month under BC Housing rules.

The tenant testified that the amount of rent fluctuates, and that her rent should have been \$245.00 per month, though she agreed that the rent for June 2022 was \$426.00.

The landlord's written submission states they are seeking an order of possession because the tenant is over-housed by BC Housing standards, as she lives alone in a three-bedroom townhouse.

The landlord submitted as evidence a letter from BC Housing, dated May 2017, which states that the tenant ceases to qualify for her subsidized unit.

A copy of the signed tenancy agreement is submitted as evidence. At part 6. BASIS OF TENANCY, it notes that "the Lessor, as a social housing agency, has selected the Tenant on the basis of the number of Tenants and Occupants and the Tenants' and Occupants' income and assets, which establishes the Tenant's eligibility for subsidy."

A copy of the Two Month Notice is submitted as evidence. The Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the tenant no longer qualifies for the subsidized rental unit.

The landlord testified the Two Month Notice was served on the tenant in person on October 5, 2021; this was confirmed by the tenant.

The tenant's written submission states that BC Housing approved her to be waitlisted for another subsidized unit, but that she has not received a call from any of those places due to housing shortages. The tenant submitted that she is a senior and cannot handle the stress of moving due to "health issues, like low energy, stress, anxiety, high blood pressure, diabetes, thyroid etc." The tenant submitted as evidence two notes from her doctor, dated April 2020 and December 2021, which state that the tenant suffers from diabetes and high blood pressure, and recommend that the tenant should not have to move, "because of her health issues complicated by stress and anxiety and low energy."

Analysis

Section 49.1(2) of the Act permits a landlord to end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant ceases to qualify for the rental unit.

The landlord has submitted that the tenant is over-housed by BC Housing standards, as she lives alone in a three-bedroom townhouse, and the landlord has submitted as evidence a letter from BC Housing which states that the tenant ceases to qualify for her subsidized unit.

Based on the testimony of the parties, I find the landlord served the Two-Month Notice on the tenant in person on October 5, 2021, in accordance with section 88 of the Act.

Section 49.1(4) requires a notice under this section to comply with section 52 of the Act.

I find the Two Month Notice complies with section 52 as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form.

Section 49.1(5) of the Act provides that 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.

I find the tenant has failed to file an application for dispute resolution within 15 days of October 5, 2021, the timeline granted under section 49.1(5) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 49.1(6) of the Act to have

accepted that the tenancy ends on the corrected effective date of the Two Month Notice, January 31, 2022, and must vacate the rental unit.

Therefore, in accordance with section 49.1 of the Act, I find the landlord is entitled to an order of possession.

Conclusion

The parties reached a settlement on the unpaid rent. In support, the landlord is granted a monetary order for \$1,000.00.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

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: June 22, 2022

Residential Tenancy Branch