



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on March 8, 2022 seeking an order to cancel the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Two-Month Notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 10, 2022.

Both parties attended the conference call hearing. The Landlord confirmed they received the Notice of Dispute Resolution Proceeding document from the Tenant. At my request, the Landlord provided a copy of the Two-Month Notice as well as its accompanying letter at the conclusion of this hearing.

Issues to be Decided

Is the Tenant entitled to a cancellation of 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*?

Background and Evidence

Though neither party provided a copy of the tenancy agreement, the Landlord provided details on the agreement that the Tenant confirmed. The Tenant signed a tenancy agreement on January 26, 2021. The basic amount of rent was \$340 per month as of the date of this hearing. The agreement exists on a month-to-month basis.

The Landlord set out the background that governs a situation of this type with subsidized housing. A tenant must be able to live independently. What this means is that someone can have physical or medical conditions for which they require support; typically, this is a situation involving the need for medication. With that, a tenant must be willing to take care of the rental unit, as well as be physically capable of taking care of the unit in terms of their own health and safety.

The Landlord served the Two-Month Notice to the Tenant on February 22, 2022. They served this to the Tenant in person as provided for in the "Proof of Service" document they provided to the Residential Tenancy Branch.

The Landlord served the Two-Month Notice with an accompanying cover letter. In this letter the Landlord set out directly to the Tenant:

A condition of receiving subsidy is that you must be able to live independently, as per the conditions set out in your application for housing, and in your Tenancy Agreement with BC Housing. It is determined that due to your serious health conditions, you are no longer able to care for yourself and your home independently, and as a result BC Housing must end your subsidy and your tenancy.

In the hearing, the Landlord described the Tenant's behaviour when interacting with the Landlord as being of concern. They deemed this as the Tenant's lack of participation, resulting in the unit being not in a clean/healthy standard because of the Tenant's own "minimal attempts and keeping the unit clean." The Landlord also cited the Tenant's apparent lack of willingness to leave the unit in the event of an emergency, and not answering their door when the Landlord or their representative needed to communicate or monitor the state of the rental unit.

The Landlord's witness in the hearing spoke to their first-hand observations and experiences with the Tenant. They noted the Tenant could not participate in any conversation and needed to have a support worker present. The witness attends to the rental unit once weekly, knocking on the door and asking for confirmation that the Tenant is okay; to this the Tenant

does not respond with verbal confirmation or an open door. This witness also described their direct observation of the Tenant when they were able to enter the unit, with the Tenant remaining on the bed, with eyes closed and not speaking. With the Landlord, the witness also described the Tenant having no heat on and windows open during the colder winter months.

The Landlord stated their awareness that the Tenant faces some medical “challenges” and fully acknowledges that; however, the exact nature of these challenges is not known to the Landlord, recorded only on a secure database to which the Landlord does not have access. The Landlord reiterated that the current tenancy, in this particular rental unit, is not supportive housing, and there is no staff present on a day-to-day basis that attends to the Tenant for basic care needs.

At the hearing, the Tenant advocate provided all submissions on behalf of the Tenant. As well, a registered social worker attended as a witness and spoke to their interactions with the Tenant and their knowledge of the Tenant’s personal circumstances.

They submitted the Tenant was able to take care of themselves despite “not engaging with people in the outside world.” They have people who assist with daily needs, and they are able to eat and use the bathroom on their own. They submit this is not a reason to be evicted, where it is only evident to the Landlord that the Tenant does not want to speak to one of the Landlord’s own workers.

The Tenant’s social worker clarified that the notion that the Tenant was not willing to go to care is simply incorrect because the Tenant recently attended to the hospital as required for medication needs.

The Landlord responded to what they heard from the Tenant’s support in the hearing by querying their advocate on the apparent shift, where that advocate had seemed to agree that a more supportive living arrangement was more suitable for the Tenant here. The Landlord also stated their commitment to working together with the Tenant and their support crew to find a suitable living arrangement, and they recently attended meetings with other representatives to look at all resources in the area.

Analysis

The Act s. 49.1 provides a definition of “subsidized rental unit” that applies to this tenancy:

a rental unit that is . . . (b) occupied by a tenant who was required to demonstrate that the tenant . . . met eligibility criteria related to . . . health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

Following this, s. 49.1(2) provides that:

. . . 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 . . . ceases to qualify for the rental unit.

Following this, s. 55 provides that I must grant to the Landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the Tenant's Application or uphold the Landlord's notice.

In this matter, the Landlord bears the onus to prove the reason for ending the tenancy is valid and undertaken in good faith.

I find the Landlord has not met the burden to show the reason they issued the Two-Month Notice is valid.

As I mentioned to the parties in the hearing, there was no evidence submitted in advance for consideration. There was no copy of the tenancy agreement in place, and given the wording found in s. 49.1(2), I find there is no reference in place to the Landlord's authorization to end a tenancy in this situation where they have deemed the Tenant as ceasing to qualify. More simply, there is no proof in place that the Tenant would have been aware, as per the tenancy agreement, that the Landlord could end the tenancy for this reason, which in itself may be entirely valid.

Aside from that, I find the letter that the Landlord served with the Two-Month Notice made reference to "the conditions set out in your application for housing". The Landlord did not provide a copy of this application and did not provide more detail on what those conditions were. I find they are unable to prove that the Tenant was well aware of those conditions, and it is plausible that, had they been aware, that knowledge may have affected the way they interacted with the Landlord and responded to the Landlord's queries or concerns.

Additionally, the letter mentioned "serious health concerns"; however, in the hearing the Landlord was unable to elaborate on those serious health concerns. What the Landlord described in terms of the Tenant's behaviour I find does not amount to serious health concerns. I find this letter serves as part of the Two-Month Notice; however, it contains a factual inaccuracy where there has not been a health concerns clearly set out or identified, and

presumably this would be necessary as per the Tenant's initial application the Landlord referred to.

From these two points I find the Landlord has not presented that their reason for issuing the notice – related to “health or similar criteria before entering into the tenancy agreement” – was not fully in place and did not justify an end to this tenancy. The Landlord did set out that this tenancy was set up in rapid fashion minus a proper vetting process that would normally occur. The *Act* as set out in s. 49.1 refers to eligibility criteria, and if these are not clearly established in the evidence, a notice to end tenancy cannot legally stand for this reason.

The Two-Month Notice is thus cancelled, and the tenancy shall continue.

Conclusion

For the reasons above, I order that the Two-Month Notice issued by the Landlord on February 22, 2022 is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 22, 2022

Residential Tenancy Branch