



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNQ**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's Two Month Notice to End Tenancy Because Tenant Does Not Qualify for Subsidized Rental Unit (the "Two Month Notice") pursuant to Sections 49.1 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord's Resident Service Coordinators and Manager, and the Tenant, her social worker and support worker, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

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

Both parties acknowledged receipt of:

- the Landlord's Two Month Notice, deemed served February 19, 2022; and,
- the Tenant's application for dispute resolution and all evidence, deemed served March 16, 2022.

Pursuant to Sections 88 and 89 of the Act, I find that both parties were duly served with all documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's Two Month Notice?

2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on June 1, 2021. Currently, the monthly rent is \$472.00 payable on the first day of each month. The Tenant states starting July 2022, the monthly rent will be \$280.00 payable on the first day of each month. A security deposit of \$414.00 and a pet damage deposit of \$414.00 were collected at the start of the tenancy and are still held by the Landlord.

The reason to end tenancy noted on the Landlord's Two Month Notice was that the Tenant no longer qualifies for the subsidized rental unit. The effective date on the Two Month Notice was May 2, 2022.

The Landlord testified that the Tenant started her tenancy with them because she was pregnant. The Landlord was not aware that the Tenant was at risk of having her child removed by the Ministry of Children and Family Development ("MCFD"). The Landlord states that the present issue is that the Tenant's child is not with her 40% of the time, which, the Landlord submits, is the required minimum amount of time that the child resides in the rental unit for the Tenant to be eligible for subsidy of the rental unit. The Landlord relies on Section 37 of their tenancy agreement addendum. It states:

37. OCCUPANT(S) In addition to Section 8-Occupants and Guests, and under the terms of the agreement with the Commission, the Landlord has selected the Tenant based on the number of Tenants, Occupants and Dependents along with the ages of the Occupants and/or Dependents and the Tenant's and/or Occupant's and/or Dependent's income and assets. Any change in the number of Tenants and/or Occupants and/or Dependents is material and of great importance to the decision of the Landlord to continue or terminate the tenancy. It is a condition of this agreement, in the event of a change in the number of Tenants and/or Occupants and/or Dependents in the Rental unit or the Tenant's and/or Occupant's and/or Dependent's income or assets, the Landlord will have the right to terminate this agreement. The Tenant agrees to notify the Landlord promptly of any change in the number of Tenants and/or Occupants and/or Dependents in the Rental unit and in the Tenant's and/or Occupant's and/or Dependent's income or assets.

The Tenant makes an agreement that the persons identified in the Agreement will be the only Occupants during the term of this Agreement unless the Landlord agrees in advance, IN WRITING, to other persons becoming Occupants.

If there is a change in the number of Tenants and/or Occupants or in their income or assets, or the Occupants ages make them in violation of the National Occupancy Standard, the Landlord may terminate this agreement. The Landlord will not be obliged to offer other accommodation and will not be liable to the Tenant in any manner whether or not the Tenant accepts other accommodation and enters into a new Tenancy Agreement with the Landlord.

The Landlord states they have an operating agreement with a provincial agency attached to their rental units which are designed for families with children under 19 years of age. They maintain that they have been in violation of their operating agreement with the provincial agency.

The Landlord provided a resident support worker referral to the Tenant on July 19, 2021. The volunteer resident support worker was the Landlord's witness. He stated his role was to work with the Tenant to assist her in the return of her child. The Tenant's support worker stated she does not remember the Landlord's volunteer resident support worker trying to do anything to assist the Tenant with her housing. The resident support worker testified that he tried to schedule meetings with the Tenant, but he stated she would disappear or not show up at all for any scheduled meetings.

The Tenant's social worker testified that the Tenant now has three half day visits per week with her baby which started two or three months ago. The Tenant was waitlisted for a reunification program which she began on the day of this hearing. The goal of the program is to increase the parenting time at every stage of the program with the ultimate goal being reunification. At present, the baby's time is allocated to day visits, but the program is working up to overnight visits. The social worker anticipates that midway through the program, the Tenant will have her baby in her care more than 40% of the time.

The social worker testified that she sees the Tenant having unsupervised visits in the next two or three months. The social worker stated the program is built in stages and right now the Tenant only has the first two stages built. Overnights will be incorporated into the Tenant's program at a later stage. The program is crafted by the participants and the steps are made as the parent is ready for them. The social worker testified, with the Tenant's consent, that MCFD has not applied for a continuing custody order of the Tenant's baby.

The Landlord states that determining whether someone is a full-time parent comes from the *Family Law Act* and past court decisions. The Landlord argued, if a parent has custody of their child 40% or more of the time, they are considered a full-time parent. The Landlord testified that the 40% cut-off rule came from when parents had shared custody and the parents wanted to be in subsidized units. Later, the Landlord stated the 40% cut-off rule is not in the caselaw but is in the *Family Law Act*. She said this legislation is large and did not point to the relevant section.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 49.1 of the Act is the relevant part of the legislation for this matter, it states:

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

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.

...

(4) A notice under this section must comply with section 52.

(5) 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.

... (emphasis mine)

The Tenant was deemed served with the Two Month Notice on February 19, 2022. I find the Two Month Notice complies with the form and content requirements of Section 52 of

the Act. The Tenant applied for dispute resolution on March 3, 2022 which was within the 15 days after receipt of the Two Month Notice.

The Landlord is relying on Section 37 of its tenancy agreement addendum which they submit prescribe the rules of their subsidized housing policy. Section 6 of the Act specifies which rights and obligations of landlords and tenants are enforceable between parties. It states:

Enforcing rights and obligations of landlords and tenants

- 6** (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*
- (2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
- (3) *A term of a tenancy agreement is not enforceable if*
- (a) the term is inconsistent with this Act or the regulations,*
 - (b) the term is unconscionable, or*
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

Section 37 of the tenancy agreement addendum is silent on the required cut-off time amount where the Landlord would exercise its discretion to terminate the tenancy. The Tenant has resided in the rental unit since June 1, 2021, and the Landlord issued the Two Month Notice in February 2022. The Landlord did not testify to what the trigger was that initiated them issuing the Two Month Notice.

Section 37 of the tenancy agreement addendum states that, *“If there is a change in the number of Tenants and/or Occupants or in their income or assets, or the Occupants ages make them in violation of the National Occupancy Standard, the Landlord may terminate this agreement.”* (emphasis mine) The tenancy agreement must clearly say that the tenancy will end if the tenant no longer qualifies for the subsidy; however, I find this section is not expressed in a manner that clearly communicates the Landlord’s rights of termination of tenancy.

I do not understand why the Landlord waited eight and a half months before issuing the Two Month Notice. I find Section 37 of the tenancy agreement addendum is ambiguous

and non-specific to the Tenant. I find the eligibility criteria is not obvious in regard to the Tenant and due to this lack of clarity, I find pursuant to Section 6(3)(c) of the Act that the section is not enforceable, and I cancel the Landlord's Two Month Notice. The tenancy will continue until ended in accordance with the Act.

Conclusion

The Landlord's Two Month Notice is cancelled, and the tenancy will continue until ended 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 Act.

Dated: July 12, 2022

Residential Tenancy Branch