



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession because the tenant no longer qualifies for subsidized housing, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony and called 1 witness who also gave affirmed testimony. The tenant attended the hearing, assisted by a support person, who did not testify. The tenant gave affirmed testimony, and the parties, or the agents/assistant were given the opportunity to question each other.

At the commencement of the hearing, I learned that the landlord has provided all evidence to the tenant but the tenant has not provided any of the tenant's evidence to the landlord. Any evidence that a party wishes to rely on must be provided to the other party. Since the tenant has not done so, I decline to consider the tenant's evidentiary material. All evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 1, 2014 and the tenant still occupies the rental unit. Rent is subsidized, and currently the

tenant's 30% share of gross household income amounts to \$698.00 payable on the 1st day of each month, and there are currently no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$640.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 2 bedroom townhouse, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on July 14, 2022 the tenant was served with a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the Notice) by registered mail, and a copy has been provided for this hearing. It is dated July 14, 2022 and contains an effective date of vacancy of September 30, 2022. For this building, all tenants have to apply for the subsidy annually and provide documentation about income of all family members over the age of 19, to calculate the amount of rent payable. The landlord's agents have sent letters to the tenant and reminders by registered mail, and have knocked on the door, but have not received a reply from the tenant, and no documentation was received from the tenant.

The tenant's son is aged 13 or 14 but has not lived in the rental unit for almost a year and a half. The rental unit is a 2 bedroom suite, and to reside there, the tenant's son must also reside there. The tenant has known that since the beginning of the tenancy. Each year in June, the tenant has complied, but this time, the tenant is not a family and did not provide any evidence of income.

A representative of the tenant called the landlord's office around September saying that the tenant was home from hospital, and the landlord's agents offered more time to find different housing and for the tenant to sign a Mutual Agreement to End Tenancy in order to work out a date to move out. The tenant is not eligible to occupy the rental unit and missed the deadline to provide the required information.

The landlord has not been served with an Application for Dispute Resolution from the tenant disputing the Notice, and the landlord seeks an Order of Possession.

The landlord's witness (N.O.) testified that the witness sent a form letter to the tenant, which was an Income Verification letter, a checklist and a form on April 19, 2022. It included the 2022 to 2023 Annual Income Verification package sent to all tenants, saying that they had to reply by May 20, 2022. It includes 3 parts requiring tenants' attention: to complete forms, a place to indicate who lives in the rental unit, and Part 3 requires the tenants' signature and date. It also states to provide proof of income documents because the rental amount is 30% of gross monthly income. It states that if

the tenants fail to provide the required documents, the tenants are no longer qualified to live in the building. The tenant did so last year, but not this year.

The first breach letter was sent to the tenant on June 21, 2022 and the witness received no response. The tenant said she would provide the documents but needed more time because she was in hospital. On June 28, 2022 a second breach letter was sent to the tenant requiring the completed documentation by no later than June 30, 2022, and stating failure to correct the breach may jeopardize the tenancy. On June 29, 2022 a breach letter was sent to the tenant because the caretaker told the witness that the tenant had changed the lock to the rental unit. On July 6, 2022 a 3rd breach letter was sent to the tenant for failure to send the required documentation. Copies have been provided as evidence for this hearing.

On August 11, 2022 the witness replied to an email received from the tenant's uncle, asking him to provide all pages as soon as possible, and the witness called the tenant 4 times. The tenant said she would send the information, but all that was received were illegible bank statements.

On July 14, 2022 the notice to end the tenancy was sent out.

The tenant testified that the tenant did not receive the notice to end the tenancy, and gave all required documents to the landlord on October 21, 2022.

The tenant spoke to an agent of the landlord and told the agent about treatment the tenant was receiving in the hospital. The tenant denies making promises.

The tenant was in hospital in June sometime until around the end of August and is on medication that affects the tenant's memory.

Analysis

The *Residential Tenancy Act* is clear. Once served with a 2 Month Notice, a tenant has 15 days to dispute it by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the tenant did not dispute the Notice. It is very unfortunate that no one has advocated for the tenant to prevent the Notice from being issued, or to dispute it, but the landlord has chosen to end the tenancy because of 2 issues: the tenant is occupying a 2 bedroom unit without her child living with her; the tenant has not provided the required

documentation to verify household income, despite several letters, phone calls and emails. The landlord has not provided any evidence that the landlord's contract with BC Housing requires that a 2 bedroom unit is for families only, but the landlord's agent testified that it is a requirement, and I have no reason to disbelieve that.

I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. I find that the landlord is entitled to an Order of Possession. The landlord's agent submitted that the landlord would be content with an effective date of vacancy of December 31, 2022 and I so order.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the landlord, and I order that the landlord be permitted to retain that amount from the security deposit held in trust. Alternatively, the landlord may serve the order to the tenant and file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on December 31, 2022.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may retain that amount from the security deposit held in trust or may otherwise recover it.

This order is final and binding and may be enforced.

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: November 07, 2022

Residential Tenancy Branch