



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST MENTAL HEALTH
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ (CNL), LRE, OLC, LAT

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on June 14, 2022 for an order suspending or setting conditions on the landlord's right to enter the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and authorization to change the locks to the rental unit. After receiving the landlord's 2 Month Notice, the tenant amended her application on July 27, 2022, seeking an order cancelling the Two Month Notice to End Tenancy Because Tenant Does Not Qualify for Subsidized Rental Unit (Notice/2 Month Notice).

The tenant and the landlord's agents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenant's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord has filed an application for dispute resolution seeking enforcement of the 2 Month Notice and requesting an order of possession of the rental unit. The application file number was given to me and upon review of the digital RTB file on these applications, I note that the hearing on the landlord's application is set for hearing on November 3, 2022, before the undersigned arbitrator. The file number is referenced on the cover page of this Decision. The landlord's application was not crossed with the tenant's application due to the original issues listed, which were not related.

During the hearing, the tenant confirmed receipt of the landlord's application, evidence, and notice of hearing for November 4, 2022. The landlord filed all their evidence for these disputes in their own application.

During the hearing, testimony was taken and evidence was considered only on the 2 Month Notice issued by the landlord. The reason for this is, I severed the tenant's application to exclude the tenant's other claims pursuant to the Rule 2.3, once the tenant amended her application contesting the 2 Month Notice. This Rule authorizes me to dismiss unrelated disputes contained in a single application, with or without leave to reapply.

The unrelated claims of the tenant will be addressed within this Decision.

During the hearing, I attempted to deal with the landlord's application as well, as the issues of the two applications are directly related to each other, which is enforcement or cancellation of the same 2 Month Notice. It was my belief that the tenant understood this based upon statements and testimony during the hearing and the fact the tenant acknowledged receipt of the landlord's application. However, during the latter part of the hearing when mediated settlement talks occurred, despite initially agreeing to the resolution of the matter of the 2 Month Notice, the tenant appeared not to understand that the settled agreement meant that the hearing on November 3, 2022 on the landlord's application would be made moot and the hearing would not proceed. It was apparent that the tenant wanted the hearing to proceed as she wanted to submit more evidence.

I could not determine that the tenant understood the full and final settlement of issues with a settled agreement. For this reason, I informed the parties that I would make a

Decision on the tenant's application and the hearing on November 3, 2022, on the landlord's application will not be cancelled. However, the issues in the landlord's application may be moot at the time of the hearing.

I also use my authority under the Act to incorporate and refer to the landlord's evidence from their application, again, as the tenant has confirmed receiving all the documents and has included some of them in her evidence.

As I informed the tenant at the hearing, the evidence deadline has passed and she is not permitted to file evidence for the landlord's application. If any evidence is filed, it will not be reviewed or considered.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Background and Evidence

The tenant submitted that the tenancy began on March 1, 2016. The rent is geared towards income and is considered subsidized housing.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord submitted that they served the 2 Month Notice to the tenant by attaching it to the tenant's door on July 21, 2022, which listed an effective move-out date of September 21, 2022. Filed in evidence by the tenant in her own amended application and by the landlord in their application was a copy of the 2 Month Notice.

The Notice listed as reason for ending the tenancy is that the tenant no longer qualifies for the subsidized rental unit. The landlord became operator of the residential property from the original landlord in March 2017. The rent is subsidized and is under BC Housing operator programs. Filed in evidence between the two parties was a partial tenancy agreement, a "Shelter Information" form completed by the original landlord on behalf of the tenant, and an application for rent subsidy completed by the tenant.

The landlord's evidence shows that the tenant was given a letter on April 14, 2022, from the landlord in which the tenant was informed that her rental unit was required to

provide a “*future home to a couple who may be experiencing homelessness. As you may be aware, suite #(rental unit number) is designed to provide space for two people who may be in need of a home and supports*”.

In this letter, the landlord wrote that the tenant was offered another suite in the same building, a single occupancy suite that included a kitchenette and private bathroom.

The landlord submitted that the tenant failed to accept the alternate rental unit in the building and would not come to an agreement to do so, despite initially agreeing to the proposal.

The landlord sent the tenant another letter informing the tenant that she was over-housed and was at risk of losing her funding and unit at the building. The landlord wrote that if the tenant did not contact her worker to review and sign the new tenancy agreement for the single occupancy unit by June 10, 2022, and complete the move by June 15, 2022, the landlord would begin the eviction process. Filed in evidence was the letter.

The landlord explained that the process of having the tenant move to a single occupancy unit was due to the death of the tenant’s husband. The landlord submitted that they are required to follow BC Housing’s mandates to offer subsidized housing, which in this instance is to house as many people as possible to get them off the streets, and unfortunately the tenant became over-housed. The landlord said that while single occupants can qualify and occupy a 1-bedroom rental unit under other circumstances, the tenant’s rental unit is currently the only one available to have a couple move off the streets and into a home.

The landlord submitted that they do have single occupancy units available for the tenant in the same district, however, the one in the same building is no longer available as the tenant did not accept their original offer.

In response, the tenant said she was informed that BC Housing does approve single people to occupy a 1-bedroom unit and she is within her rights to do so. The tenant said she should not be evicted because she did nothing wrong.

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. Where a tenant applies to cancel a notice to end a tenancy, the landlord has to prove, on a balance of probabilities, the grounds on which the Notice is based.

Section 49.1 (2) of the Act states that 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. Also under the Act, a subsidized rental unit is operated by a public housing body, or on behalf of a public housing body, and 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.

In this case, I find the landlord submitted sufficient evidence to support their 2 Month Notice. The landlord said they were following BC Housing's mandate to provide housing to as many people as possible so they are not living on the streets. I accept this evidence and find the landlord submitted sufficient evidence to support that the tenant's rental unit is the only one currently available that could house two people, as it did when the tenant and her husband lived in the rental unit. I find it reasonable to conclude that the landlord would lose their funding and the tenant her rent subsidy if they did not comply with BC Housing's mandate.

I find the RTB may not interfere with the policies and mandate of BC Housing and their operators.

For these reasons, I find the landlord submitted sufficient evidence to prove that the tenant no longer met the eligibility criteria related to number of occupants and other criteria. I find they had the right to end this tenancy in order to comply with the housing mandates of BC Housing as one of their operators.

I therefore find the Notice is valid and enforceable.

As a result, I uphold the 2 Month Notice and I **dismiss** the tenant's application seeking cancellation of the Notice, without leave to reapply.

I find that the landlord is entitled to, and I **grant** an order of possession for the rental unit effective 2 days after service on the tenant, pursuant to section 55(1)(b) of the Act. It is up to the landlord when they serve the order to the tenant.

Should the tenant fail to vacate the rental unit, the order must be served to the tenant to be enforceable and may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is cautioned that costs of such enforcement, **such as bailiff fees**, are recoverable from the tenant.

As the tenant's application is dismissed, I likewise dismiss the tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and authorization to change the locks to the rental unit, without leave to reapply.

Conclusion

The tenant's application is dismissed in full, without leave to reapply, as I have upheld the 2 Month Notice.

The landlord has been issued an order of possession for the rental unit, effective two (2) days after service upon 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 02, 2022

Residential Tenancy Branch