



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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 the Tenant Does not Qualify for Subsidized Rental Unit pursuant to section 49.1.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and evidence submissions on file.

Preliminary Issue – Second Adjournment request by the Tenant

The hearing was originally scheduled for December 9, 2022. The tenant had requested an adjournment as the tenant had a review hearing scheduled with the courts pertaining to a family law matter the outcome of which could have had a material impact to this application. The landlord agreed to the adjournment on condition that the tenant provides documentation relating to the court proceeding.

At the outset of this reconvened hearing, the tenant's counsel requested a further adjournment until after January 31, 2023. The tenant submitted an e-mail from a Nova Scotia Family Court stating the matter returns to Court on January 31, 2023 for a 30 minute docket appearance. No other information was provided in regards to the subject matter of the Court proceeding. The tenant's counsel submits that the purpose of the hearing is to set a date for the tenant to relocate back to Victoria with her children.

The landlord objected to any further adjournment. The landlord submits they only agreed to the initial adjournment on condition the tenant provide sufficient documentation in regards to the purpose of the upcoming Family Court proceeding. The landlord submits that based upon the July 30, 2021, Provincial Court of B.C. judgment submitted by the tenant it is clear that she no longer qualified for her subsidized housing unit since October 2020 when her parental time was drastically reduced and since January 2021 she lost all her parenting time. The landlord submits

that since this time the tenant has been submitting her subsidized housing applications by falsely misrepresenting that her children are still living with her. The landlord submits that the tenant has now only submitted a photo of an e-mail stating there is a 30-minute docket hearing upcoming, but no other information or details have been provided.

After considering the arguments from both sides pertaining to the adjournment request, I found that without any specific documentary evidence outlining the subject matter of the upcoming Family Court hearing any further delay would be prejudicial to the landlord. As a non-profit subsidized housing provider, the landlord is accountable to BC Housing to ensure tenants are not over-housed. It was not disputed that the tenant has been over-housed for over two years. There was no evidence before me that there was a strong likelihood of the July 30, 2021 BC Provincial Court judgement being overturned.

Accordingly, the tenant's adjournment request was denied and the hearing proceeded.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The tenancy for this 3-bedroom subsidized townhouse unit began on September 1, 2018.

On July 28, 2022, the landlord served the tenant with a Two Month Notice to End Tenancy on the ground the tenant no longer qualifies for the subsidized rental unit. The tenant applied to dispute this Notice within the timeline permitted under the Act.

The landlord testified that they became aware the tenant was no longer residing in the unit on June 17, 2022 when there was a serious police incident. The individuals involved in the incident said they had been residing in the tenant's unit. At this time, the landlord also became aware that the tenant did not have custody of her children for the last 18 months. On June 21, 2022, the tenant was issued a breach letter stating she no longer qualified for the unit as she no longer had custody of her children. The tenant was informed she was required to provide a current custody arrangement by July 12, 2022 and that failure to do so would result in a Notice to End Tenancy.

On July 15, 2022 the tenant was issued a final breach letter as the requested custody information had not been provided.

The tenant's counsel submits that tenant is currently in Nova Scotia dealing with the custody matter. The tenant needs to retain her residence as the tenant's children will be relocated back to BC with her after the January 31, 2023 hearing.

The tenant argues that she has always had custody of her children through the appeal process. The tenant argues that this is a child kidnapping case through mis-use of Court procedures. The tenant submits she has an ombudsperson involved in the matter.

In reply, the landlord submits that the BC Provincial Court judgement from July 30, 2021 is clear that the tenant lost full custody of her children since January 2021. It is also evident that this is not a kidnapping case as the children's father was given permission from the Court. The landlord submits that for the tenant to be qualified for her current unit she would require custody of her children for a minimum of 43% of the time.

Analysis

Section 49.1 of the Act contains provisions by which a landlord may end the tenancy of a subsidized rental unit, if provided for in the tenancy agreement, with two months' notice if the tenant or other occupant, as applicable, ceases to qualify for the rental unit. A tenant may dispute a Notice under this section by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

The eligibility requirements of a subsidized rental unit are not within the jurisdiction of the Act. The landlord only needs to provide evidence that the tenant no longer qualifies for the subsidized rental unit based on the established eligibility criteria relating to income, number of occupants, health or other similar criteria.

I find there is sufficient evidence that the tenant has not had custody of her children since January 2021 making her ineligible for her current 3-bedroom unit. I find the landlord communicated the breach to the tenant on several occasions and provided her with more than adequate opportunity to provide evidence to the contrary. I do not accept the tenant's argument that she continues to have custody through the appeal

process. I also find it is not appropriate that the tenant continue to be in a over-housed situation pending the outcome any appeal process. The tenant has been over-housed for over two years now all which time the landlord could have made the unit available to another family in need.

I find the landlord has met its onus to establish it had grounds to issue the Two Month Notice to End Tenancy. The tenant's application to cancel the Two Month Notice dated July 28, 2022 is dismissed without leave to reapply. I find the notice complies with the form and content requirements of section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **February 28, 2023**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 15, 2023

Residential Tenancy Branch