



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit.

One of the tenants attended the hearing and represented the other named tenant. An agent for the landlord also attended. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which 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 March 1, 2022 and the tenants still occupy the rental unit. Rent is subsidized and the tenants' share is \$501.00 payable on the 1st day of each month. On February 1, 2022 the landlord collected a security deposit from the tenants in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite and a copy of the tenancy agreement has been provided for this hearing.

The landlord's agent further testified that on October 20, 2022 the tenants were served with a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the Notice) by attaching it to the door with a witness. A copy of the Notice has been provided for this hearing and it is dated October 20, 2022 and contains an effective date of vacancy of December 31, 2022. The reason for issuing it states: The tenant no longer qualifies for the subsidized rental unit.

The rental unit is a 2 bedroom unit, which must be occupied by a family. When it was rented, the resident manager didn't see the tenant's daughter there. On September 12, 2022 the landlord provided a letter to the tenant, a copy of which has been provided for this hearing, asking that the tenant verify that the tenant's daughter lived there by September 19, 2022 but the tenant did not comply. It also states that if the tenant's daughter does not reside in the rental unit, the tenant will be considered over-housed. Another letter to the tenant states that the tenant's subsidy was subject to a review on December 1, 2022, and that the landlord had requested that the information by no later than November 22, 2022 but was not received. The letter gives the tenant an extension to January 19, 2023 to provide the documentation as requested, failing which the subsidy would be cancelled effective February 1, 2023 and the tenant may receive a notice to end the tenancy.

Another letter was provided to the tenant on October 4, 2022 asking for proof that the tenant's daughter lived there, but the tenant did not reply. On October 19, 2022 the tenant was given another letter stating that the landlord did not believe that the tenant's daughter lived there and the deadline had passed, and that the landlord would be issuing a notice to end the tenancy.

Currently, the 2 bedroom unit is occupied by the tenant who attended this hearing only. The landlord just needed proof that the tenant's daughter is living there, but the tenant has refused. It is clear that no child lives with the tenant. The resident manager went in multiple times and the tenant's daughter was not there. The landlord's agent believes that the tenant's daughter is not in the country.

Another letter was provided to the tenant asking that the tenant bring the tenant's daughter to the landlord's office because a custody document won't prove that she lives there.

The Addendum to the tenancy agreement states, at paragraph 2, that:

2. Failure to Disclose or Misrepresentation

The tenant consents to the landlord verifying personal information, as defined in the Freedom of Information and Protection of Privacy Act, which consent is required by that Act to enable the landlord to carry out its audit function. The tenant also agrees that if the tenant fails to disclose or misrepresents any information requested by the landlord to allow the landlord to determine the applicable Tenant Rent Contribution, or for audit purposes, such failure or misrepresentation will be deemed to be a material breach of this tenancy agreement entitling the landlord to end this tenancy agreement and to recover from the tenant in contract or otherwise the difference between the amount the tenant paid and the amount the tenant is required to pay under this tenancy agreement. This remedy is not exclusive and may be exercised by the landlord in addition to any other remedies available to the landlord in law or equity or as set out in this tenancy agreement.

Paragraph 3 of the Addendum states that:

3. Occupants and Guests

The landlord has selected the tenant on the basis of the number of occupants among other criteria. The tenant agrees that only those persons listed as tenants and occupants are allowed to live in the rental unit during the term of this tenancy, unless the landlord otherwise consents in writing. Any change in the number of occupants is material and of great importance to the landlord and entitles the landlord at their discretion to end this tenancy agreement. The tenant agrees to notify the landlord promptly of any change (increase or decrease) in the number of occupants. If the tenant is eligible for a rent subsidy, the tenant agrees that any person that resides with the tenant in excess of 14 days, whether or not consecutive, in any 12 month period, without the written consent of the landlord, will be considered an occupant and:

- (a) that person's income must be declared to the landlord immediately;
- (b) that person, if 19 years or older, must agree to be a tenant under this tenancy agreement by signing an addendum to this tenancy agreement and must be approved by the landlord as a tenant; and
- (c) failure to comply with these provisions entitles the landlord to end this tenancy agreement.

Transferring the tenant to a 1 bedroom unit is not an option because the tenant has been given many opportunities, and is not cooperative. Also, the landlord does not have any 1 bedroom units available.

The tenant testified that the tenant resides in the rental unit and has submitted documents that the landlord asked for, which was provided when the tenant applied for the apartment.

The first letter provided by the landlord mentioned looking for documents in the guideline for the subsidy.

The tenant's daughter lives with the tenant, and sometimes with other family, which the tenant told the landlord at the beginning. Then the landlord gave a letter asking that the tenant produce the tenant's daughter in person, which is not required by the guideline. The BC Housing Subsidy Guideline does not require that. The landlord has custody documents.

The tenant has also provided an unsigned letter, which states, in part, that the landlord presented an illegal and not binding request to the tenant, being having the tenant's daughter stand in front of the building manager. It also states that the request is not included in the Housing Subsidy Guidelines list because it is unreasonable, and that the necessary conditions have been met for the tenant to qualify for the rental unit in advance. Nothing changed except that the building manager did not see the tenant's daughter. It also states that at worst, the tenant should be transferred to a more appropriate unit, as indicated in the landlord's September 12, 022 letter.

The tenant also testified that other options are available to the landlord, such as a transfer to another suite, which would be better than living on the street.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*.

I have also reviewed the letters provided by the parties. One of the letters from the landlord to the tenant dated September 12, 2022 states that the tenant had informed the Resident Manager that the tenant's daughter is staying overseas but will be back to start the school year. It also states that the landlord required confirmation that the tenant's daughter is living with the tenant at least 50% of the time to continue the rental subsidy. It also requests confirmation that the tenant's daughter is enrolled for the 2022/2023 school year in a local school.

The landlord provided another letter to the tenant dated October 4, 2022 which requires the tenant to produce the tenant's daughter or submit documentation to the resident manager showing that the tenant's child currently resides with the tenant, by October 11, 2022.

I have also read the letter of support for the tenant from a counselling service, however it is not my discretion as to whether or not the tenant qualifies for the subsidized housing. My mandate is to determine whether or not the landlord issued the notice to end the tenancy in accordance with the law.

I have also reviewed the 2-page letter provided by the tenant, and I agree that it is not reasonable for the landlord to require the tenant to have the tenant's daughter stand in front of the landlord's agents. The evidence shows that the landlord accepted the tenancy for a rent contribution of \$501.00 effective on March 1, 2022. The evidence also shows that the resident manager has never seen the tenant's child. However, the September 12, 2022 letter from the landlord indicates that the child must reside with the tenant at least 50% of the time, and the tenant testified that the daughter lives with other family as well.

The tenant also testified that nothing changed except that the building manager did not see the tenant's daughter.

If the tenant's child does live with the tenant and goes to school as indicated, I see no reason why the tenant would refuse to provide that proof to the landlord. However, I have also reviewed the tenancy agreement and Addendums, which do not clearly specify that the 2 bedroom unit is for families, not individual tenants, and no one has provided me with a copy of the BC Housing Guidelines that speak to that.

Further, the only clear evidence that the tenant no longer qualifies for the subsidized unit is the information from the resident manager that he/she has never seen the tenant's daughter. The landlord's agent testified that when in the rental unit, the landlord's agent has not seen the tenant's daughter either. There is no evidence that an inspection was completed, on notice to the tenant, to ensure items belonging to the tenant's daughter did or did not exist.

In the circumstances, I find that the landlord has failed to establish that the tenant no longer qualifies for the rental unit, and I cancel the Notice.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated October 20, 2022 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

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: March 09, 2023

Residential Tenancy Branch