



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Capital Region Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with the Tenant's application under section 49.1 of the *Residential Tenancy Act* (the "Act") to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated February 24, 2023 (the "Two Month Notice").

The Tenant and the Landlord's agents BW, KL, and SM attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant was represented by legal counsel HF during the hearing.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Tenant's Name

This application initially contained a minor typo in the Tenant's name. I have amended this application to correct the Tenant's name pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

KL confirmed receipt of the notice of dispute resolution proceeding package and initial documentary evidence from the Tenant. I find the Landlord was served with the notice of dispute resolution proceeding package and initial documentary evidence in accordance with sections 88 and 89 of the Act.

KL stated that she received additional evidence from the Tenant at the end of day on Thursday, April 6, 2023. KL submitted that the additional evidence was late and that the Landlord's agents did not have sufficient time to review and respond to the evidence, which was lengthy.

Counsel for the Tenant submitted that the additional evidence consisted mostly of law that the Tenant would be referencing, and the only crucial evidence was a letter from the bank (the "RBC Letter"). Counsel submitted that this letter could not have been obtained earlier. KL acknowledged that she has reviewed the RBC Letter, though she noted that it was pasted into a word document and she did not have a chance to speak with a bank representative about it.

According to Rule 3.14 of the Rules of Procedure, digital or documentary evidence that an applicant intends to rely on at a hearing must be received by the respondent and the Residential Tenancy Branch not less than 14 days before the hearing. I find the evidence submitted by the Tenant on April 6, 2022 was served late. Under Rule 3.17 of the Rules of Procedure, evidence not provided in accordance with Rule 3.14 may still be considered if it is new and relevant evidence and was not available at the time that the party served their evidence. As discussed with the parties during the hearing, and pursuant to Rules 3.14 and 3.17, I admit the RBC Letter for consideration in this application as new and relevant evidence. I do not consider the remainder of the Tenant's evidence submitted on April 6, 2023, as such evidence was not served on the Landlord in accordance with the Rules of Procedure and the Landlord's agents did not have sufficient time to review this lengthy evidence.

Counsel confirmed the Tenant's receipt of the Landlord's documentary evidence. I find the Tenant was served with the Landlord's evidence in accordance with section 88 of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancel the Two Month Notice?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments

relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on July 1, 2008 and is month-to-month. Rent is \$864.00 due on the first day of each month. The Tenant's current contribution of the monthly rent is \$472.00. The Tenant paid a security deposit of \$280.00.

The building in which the rental unit is located is administered by the British Columbia Housing Management Commission ("BC Housing"). The Landlord's agents explained that all units in this building are subsidized due to the Landlord's operating agreement with BC Housing, so the Landlord would not be able to offer the same unit at market rate to a tenant who ceases to qualify for subsidy.

The Landlord's agents referred to section 8.1 of the Landlord's operating agreement with BC Housing, which states that the amount each tenant shall contribute towards rent shall be determined by the British Columbia Rent Scale, as may be amended from time to time, to the income and asset declaration submitted by the Landlord and the tenant subject to any modification that BC Housing may deem necessary. This provision further states that BC Housing has final authority in determining the amount of the tenant's rent contribution.

A copy of the parties' tenancy agreement is submitted into evidence. Documents attached to and forming part of the parties' tenancy agreement include Addendum A – Additional Terms, Addendum B – Application for Rent Subsidy, and Addendum C – Eligibility for Subsidized Housing.

Addendum C, which is signed and acknowledged by the Tenant, provides as follows:

The Residential Tenancy Act states that as a public non-profit Municipal housing body, the Capital Region Housing Corporation having agreements for the operation of the rental housing with the British Columbia Housing Management Commission and the Canada Mortgage and Housing Corporation may end a tenancy with two months' notice if the tenant no longer qualifies for a subsidized unit.

Section 1 of Addendum A states (emphasis added in bold underline):

1. Rent Review:

The yearly anniversary date for RENT REVIEW is the 1st day of April, 2009, unless otherwise permitted by law in which case it will be a date decided by the Corporation in accordance with the law. If the rent paid by the Tenant is related to the Tenant's income, an instructional letter together with an Application for Rent Subsidy Form (BCHMC units) or Rent Determination/Adjustment Advice Form (CMHC units) will be forwarded to the tenant annually, allowing sufficient time for completion and return to the corporation. **Failure to return the documentation including verification of income and assets by the required return date will result in the termination of the Rent Subsidy and Notice to End Tenancy will be served.** The Corporation is exempt from Section 18 of the *Residential Tenancy Act*.

On or around December 1, 2022, the Landlord sent the Tenant its annual letter with the subject line Re: Application for Continued Rent Subsidy (the "December 1, 2022 Letter") to invite the Tenant to re-apply for her annual subsidy effective April 1, 2023. The December 1, 2022 Letter requested the Tenant to return a completed copy of an enclosed Application for Rent Subsidy Form together with proof of gross monthly income and asset documentation by December 23, 2022. The December 1, 2022 Letter also included documents titled "Tenant/Member Checklist" and "Income Sources", which contain additional instructions and explanations regarding acceptable documentation for proof of income and assets.

Copies of the proof of income and assets documents given by the Tenant to the Landlord in response to the December 1, 2022 Letter have been submitted into evidence. These documents include statements from the Tenant's Royal Bank of Canada (RBC) accounts and Bank of Montreal (BMO) accounts. Nearly all of the account numbers in these statements have been redacted, with the exception of an account number for a BMO chequing account in the middle of the statement that appears to have been missed. Occasionally, there are handwritten numbers next to the redacted account numbers. Transit or branch numbers are generally redacted. In some incidences, the branch address is also redacted. Some transaction descriptions have been completely redacted except for the date and amount. The documents given by the Tenant as proof of income and assets also include an income assistance stub that contains redactions.

BW, the staff member working on the Tenant's subsidy application, left a voicemail with the Tenant on February 8, 2023 about the requirement for complete income and asset information. BW advised that the Landlord is unable to accept statements with account numbers blacked out, as the Landlord submits the information to BC Housing. BW requested the Tenant to provide the account numbers.

On February 9, 2023, the Tenant's counsel emailed to inquire about disclosing bank account numbers. BW replied and included a link to the BC Housing Rent Calculation Guide ("Rent Calculation Guide"). The stated purpose of this guide is to help housing providers calculate tenant rent contribution for residents living in subsidized rent-geared-to-income units.

On February 23, 2023, BW forwarded the Tenant the same information and link to the Rent Calculation Guide. On February 24, 2023, the Tenant's counsel requested communication to be directed to them instead of the Tenant. The Tenant's counsel advised that the Tenant is not housed by BC Housing and therefore the Rent Calculation Guide does not apply. The Tenant's counsel also advised that the Rent Calculation Guide is a guide only and not policy.

On February 24, 2023, BW emailed the Tenant's counsel advising that a two month notice to end tenancy due to the Tenant ceasing to qualify for the subsidized rental unit will have to be issued. BW advised that this notice to end tenancy would be "null and void" if the requested documentation is received by March 20, 2023.

On February 24, 2023, the Landlord issued the Two Month Notice to the Tenant, with an effective date of April 30, 2023. The stated reason for ending the tenancy is that the Tenant no longer qualifies for the subsidized unit. The Tenant confirmed receipt of the Two Month Notice on February 24, 2023.

The Landlord submits that as a subsidized housing provider, it receives subsidies from BC Housing and is subject to BC Housing's rules regarding income and assets, as amended from time to time, pursuant to the operating agreement. The Landlord follows BC Housing's guidance to avoid tenants becoming ineligible or subject to audit, fraud, misuse of public funds, and to ensure future payments. The Landlord does not have control over the subsidy rules and only applies the current rules. As the Tenant does not wish to submit proof as requested, the Tenant is no longer eligible for subsidized housing.

BW confirmed that she recently undertook training with a former BC Housing auditor, raised this situation as an example, and was told that regardless of whether the Landlord had previously accepted redacted proof, BC Housing's rules on supplying subsidy take precedence. BC Housing sets the rules and requirements, which are subject to change. If a staff member catches something that does not meet BC Housing's standards, this would be upheld by BC Housing. Best practices would be applied. The Landlord's agents confirmed that BC Housing's instructions are to obtain unredacted bank account numbers.

KL acknowledged that the Landlord may have accepted redacted information from the Tenant in the past, but expressed that what was submitted is not sufficient for BC Housing.

KL explained that it is difficult to compare bank accounts from year to year with the account numbers redacted. KL testified regarding a recent case involving a tenant who was submitting one set of information one year and another set of information another year, leading to issues with their subsidy and an audit. KL submitted that this policy is necessary to preserve the subsidy as it relates to the public purse and to prevent fraud.

KL indicated that the importance of private information is understood by the Landlord, and the private information that the Landlord is allowed to access as a landlord is limited in law, but the information being collected in this instance is for the subsidy application and not tenancy purposes.

Counsel for the Tenant submitted that they had requested clarification from the Landlord as to why the Landlord wanted to collect highly private information, which landlords are not entitled to according to the Office of the Information & Privacy Commissioner (OIPC), and which is highly protected due to risk of fraud and identity theft. Counsel submitted that the Landlord did not reply but issued the Two Month Notice instead.

The Tenant's counsel argued that the Landlord never provided a reason other than the Rent Calculation Guide, which is effective January 2023. The Tenant's counsel argued that this guide was not in effect as at December 23, 2022, the deadline for the Tenant to submit her 2023 subsidy application. The Tenant's counsel argued that there is nothing which states the Rent Calculation Guide is an absolute policy instead of merely a guide. Counsel argued that the Rent Calculation Guide only requires bank account numbers to be provided for downloaded online bank statements.

The Tenant's counsel argued that the only bar the Tenant needed to clear to qualify for subsidized housing was to show that she receives income assistance, as the Tenant clearly does. The Tenant's counsel submitted that certain account types, such as registered education savings plans and registered disabilities savings plans, are not required for the Tenant's subsidy calculation. Counsel further argued that the Tenant's documentation complies with the requirements of the December 1, 2022 Letter, the Tenant/Member Checklist and the Income Sources checklists. The Tenant's counsel argued that the Tenant had complied with all instructions by the December 23, 2022 deadline.

The Tenant testified that she had always redacted all account numbers, or only showed a small part of an account number, which were accepted by the Landlord previously.

The Tenant's counsel submitted that the Tenant was advised by her bank to not provide her bank account numbers as there is no requirement or reason for them to be provided. Counsel submitted that BC Housing advised the Tenant to seek instruction from OIPC.

The Landlord's agents confirmed that the Rent Calculation Guide submitted is the up-to-date version. SM testified that the previous version of the Rent Calculation Guide did not authorize redaction of bank account numbers.

Analysis

1. Is the Tenant entitled to cancel the Two Month Notice?

Under section 49.1(2) of the Act, 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, and if this is provided for in the tenancy agreement.

Section 49.1(1) of the Act defines a "subsidized rental unit" as 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.

The Landlord and BC Housing are both prescribed public housing bodies for the purpose of section 49.1 of the Act, as defined in section 49.1(1) of the Act and sections 2 and 3.1 of the regulations.

Based on the terms of the tenancy agreement, including the addendums which form part of the tenancy agreement, I find the Tenant was required to demonstrate that she met eligibility criteria related to income and number occupants before entering into the tenancy agreement. As such, I find the rental unit is a “subsidized rental unit” as defined in section 49.1(1) of the Act.

I find the tenancy agreement provides that the Landlord may end the tenancy if the Tenant no longer qualifies for a subsidized unit. Therefore, I am satisfied that the Landlord was entitled to issue the Two Month Notice under section 49.1(2) of the Act.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

In addition, section 49.1(3) of the Act states that unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

- (a) not earlier than 2 months after the date the notice is received,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I have reviewed the Two Month Notice and I find that it complies with the requirements of section 52 of the Act in form and content. I further find that the effective date of the Two Month Notice complies with the requirements of section 49.1(3) of the Act.

I find the Tenant received a copy of the Two Month Notice on February 24, 2023. Section 49.1(5) of the Act permits a tenant to dispute a two month notice to end tenancy for ceasing to qualify for a rental unit within 15 days of receiving such notice. Records of

the Residential Tenancy Branch indicate the Tenant submitted this application on March 7, 2023. I find the Tenant made this application within the stipulated time limit.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

For the reasons that follow, I find the Landlord has established that the Tenant ceased to qualify for the rental unit.

I find it is helpful to first refer to the decision of *Potecho v. Red Door Housing Society*, 2014 BCSC 36 ("*Potecho*"), in which the Supreme Court of British Columbia judicially reviewed a decision of the Residential Tenancy Branch regarding a similar notice to end tenancy under section 49.1 of the Act.

The arbitrator in that case had noted the tenant's arguments about the necessity of certain items required by the landlord for the tenant's income and asset review, but found that it was "not within [their] purview to question the criteria used by the landlord or BC Housing" (as quoted in para. 45 of *Potecho*). The arbitrator further noted that "Tenants are subject to the privilege of a rent subsidy based on a written agreement to provide materials necessary for the landlord to be satisfied that an assessment of income and assets is accurate" (as quoted in para. 45 of *Potecho*). The arbitrator concluded that the tenant did not provide the materials "in a timely manner" and granted the landlord an order of possession. At para. 73 of *Potecho*, the Court did not take issue with the arbitrator's assertion that it was not in their purview to question the criteria used by the landlord or BC Housing to determine eligibility. However, the Court did take issue with the arbitrator's lack of consideration of what specific information the tenant had failed to provide, and what date the arbitrator had used to determine that the tenant had failed to prove eligibility "in a timely manner" (see paras. 73 and 74 of *Potecho*).

In this case, I find the Landlord and BC Housing has established various policies, guidelines, and criteria for determining rent subsidy eligibility, which include the Rent Calculation Guide. While I find section 2.8 of the Rent Calculation Guide to specifically state that downloaded online bank statements must clearly indicate the account number, I find the purpose of this statement is likely for emphasis or to serve as a reminder. I do not find this statement to logically imply that paper, photocopy, or other non-downloaded bank statements are acceptable with the bank account numbers redacted. I find there is no clear rationale to differentiate between downloaded and other

bank statements in this way. I note section 2.8 of the Rent Calculation Guide expressly allows a tenant to black out merchants on bank statements for privacy reasons in some circumstances, although deposits, cash withdrawals, and transfers may not have any information redacted. However, I find there is insufficient evidence before me to show that redacting bank account *numbers* has ever been expressly authorized under any circumstances according to any of BC Housing's established policies, guidelines, and criteria for rent subsidy eligibility, including the Rent Calculation Guide, which I accept may change from time to time. I find that the instructions given to the Tenant with the Landlord's annual letters (e.g. Tenant/Member Checklist and Income Sources) do not specify that bank account numbers are required, but also do not say that account numbers may be fully or partially redacted. I accept the Landlord generally did not ask for the Tenant's full bank account numbers in previous years. However, I do not find the Landlord to be acting contrary to any established policy, guideline, or criteria by requesting this information at this time.

Furthermore, I accept the Landlord's explanation that unredacted bank account numbers are required in order for specific accounts to be tracked from year to year. I accept the testimony of the Landlord's agents of the recent case involving a tenant who was submitting different sets of information over the years. I accept the Landlord's submission that this policy is necessary to prevent fraud. I accept Landlord's agents' testimony that they have received training and direction from BC Housing to collect this information. I agree with the Landlord's position that this information is being collected for the purposes of the subsidy and not the tenancy itself. I accept the Landlord has provided reasons to justify the collection of this information. In my view, I do not have jurisdiction to decide the validity or legality of the Landlord or BC Housing's subsidy policies, guidelines, or criteria, whether generally or as they may relate to any requirements of the OIPC.

I note I have reviewed the RBC Letter. I find this document to be an email from a bank representative who simply relays the message that RBC's demands department, which looks after requests for information, court orders, and Canada Revenue Agency demand notices, would not receive or act on requests for information from BC Housing or the Landlord. I do not find the RBC Letter to support an argument that the Tenant should not be required to provide her bank account numbers to the Landlord for subsidy purposes.

I further note the Tenant's documentation includes statements for registered plans which may not be required as proof of assets according to the Landlord's instructions as

outlined in Income Sources. However, I find the Tenant has redacted account numbers for other required bank accounts, including an RBC personal banking account re-labeled #5, a BMO chequing account re-labeled #2, and an RBC tax-free savings account.

I find the Landlord extended the initial document submission deadline of December 23, 2022 for the Tenant to re-submit her documentation with unredacted bank account numbers. I find that even after the Two Month Notice was issued, the Landlord offered the Tenant a deadline of March 20, 2023 to provide the requested documentation and to have the Two Month Notice withdrawn. I find that as at the date of this hearing, April 14, 2023, the Tenant has not and would not agree to provide a copy of her bank statements to the Landlord with the bank account numbers unredacted.

Based on the foregoing, I find the Tenant has wilfully refused to provide information and documentation requested by the Landlord for the purpose of the annual rent subsidy review in accordance with section 1 of Addendum A to the parties' tenancy agreement. I find the Tenant is required to provide proof for both income and asset verification. I find that by not providing the information and documentation required by the Landlord to verify that the Tenant continues to qualify for the subsidized rental unit, the Tenant has ceased to qualify for the rental unit under section 49.1(2) of the Act.

Accordingly, I dismiss the Tenant's application to dispute the Two Month Notice without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 of the Act in form and content; and
- during the dispute resolution proceeding, the director dismisses the tenant's application or upholds the landlord's notice.

Having found the Two Month Notice to comply with the requirements of section 52 and having dismissed the Tenant's application, I find the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

According to Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, where the effective date on the notice to end tenancy has already passed, effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided. Relevant factors include the point up to which the rent has been paid and the length of the tenancy.

I find the Tenant has resided in the rental unit for many years and will likely be unable to vacate the rental unit upon two days' notice. As such and pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective 1:00 pm on May 31, 2023.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm** on **May 31, 2023**. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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: May 13, 2023

Residential Tenancy Branch