



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding B.C. HOUSING MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ, FFT

Introduction

On January 30, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the “Notice”) pursuant to Section 49.1 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

J.S. attended the hearing as an agent for the Landlord and she advised of the correct name of the Landlord. As such, the Style of Cause on the first page of this Decision has been amended accordingly. The Tenant did not attend the hearing until 11:11 AM, just prior to me concluding the hearing. B.N. attended the hearing with her as a co-tenant, and J.C. attended the hearing as an advocate for the Tenant.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord; however, she was not sure when this was done. Prior to the Tenant attending the hearing, J.S. confirmed that she received this package. Based on this testimony, I am satisfied that the Landlord has been duly served the Tenant’s Notice of Hearing package.

The Tenant confirmed that she did not submit any documentary evidence for consideration on this file.

J.S. advised, prior to the Tenant attending, that she served the Landlord's evidence to the Tenant by registered mail on May 3, 2023 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was not picked up by the Tenant. The Tenant confirmed that she received this package, but only yesterday as she was unaware of how to pick up her mail. Based on this evidence from the Landlord, I am satisfied that the Tenant was deemed to have received the Landlord's evidence five days after it was mailed. As the Landlord's evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 14, 2021, that the subsidized rent was originally established at an amount of \$635.00 per month for four people, that the subsidized rent was reduced to \$320.00 per month in September 2022, and that rent was due on the first day of each month. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Notice was served on January 25, 2023. The reason that the Landlord checked off on the Notice was because "The tenant no longer qualifies for the subsidized rental unit." The effective end date of the tenancy was noted as March 31, 2023, on the Notice.

J.S. advised that the Tenant qualified for a subsidy when the tenancy originally commenced for a total of four people. However, she testified that the Tenant's partner and two children, vacated the rental unit on September 8, 2022, when she lost custody of her children. Therefore, she no longer qualified for the three-bedroom rental unit and was over-housed.

The Tenant confirmed that she lost custody of her children on September 4, 2022, that this was not a permanent loss, and that court proceedings have been delayed. As such, she acknowledged that she was over-housed, but it was only by one room as her partner still lives there.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

I have reviewed the Landlord's Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenant acknowledged that she no longer qualified for the subsidized rental unit as her children were removed, albeit allegedly temporarily, on September 4, 2022, and they have not been back since. Regardless, as it is clear that the Tenant is over-housed and no longer qualifies for the subsidized rental unit that was originally rented for four occupants, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*. However, J.S. advised that she was willing to extend the Order of Possession date to June 30, 2023, to allow the Tenant more time to vacate.

Based on this request and pursuant to Section 55 of the *Act*, I exercise my authority to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on June 30, 2023**.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I dismiss the Tenant's Application for Dispute Resolution in its entirety.

I grant an Order of Possession to the Landlord effective at **1:00 PM on June 30, 2023**, after service of this Order on the Tenant. 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: May 23, 2023

Residential Tenancy Branch