



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes CNQ OPQ-DR

Introduction

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* ("Notice") under section 49.1 of the *Residential Tenancy Act*.

By way of cross-application the Landlord made an application for dispute resolution seeking an order of possession based on the Notice.

Issue

Is the Tenant entitled to an order cancelling the Notice and, if not, is the Landlord entitled to an order of possession?

Background and Evidence

In an application under the *Residential Tenancy Act* (the "Act") where a tenant disputes a notice to end tenancy, the respondent landlord must prove the reason for issuing the notice to end tenancy on a balance of probabilities. Stated another way, the evidence must show that the events in support of the reason for issuing the notice to end tenancy were more likely than not to have occurred.

I have reviewed and considered all the evidence that was served upon the opposing parties by each party but will only refer to that which is relevant to this decision.

It should be noted that while the Tenant filed her application on September 29, 2023, she did not serve a copy of her Notice of Dispute Resolution Proceeding upon the Landlord at any point. Ordinarily, failing to serve a copy of a Notice of Dispute Resolution Proceeding upon an opposing party will nullify a person's application and an order of possession may be granted by default. However, to ensure the utmost fairness in these proceedings, I have considered the Landlord's reason for issuing the Notice.

The tenancy began on December 15, 2022, and subsidized monthly rent is \$665.00. The Tenant paid a \$500.00 security deposit and a \$500.00 pet damage deposit. There is a copy of a Non-Profit Housing Tenancy Agreement in evidence.

The Landlord's representative testified that the Tenant was initially permitted to rent her three-bedroom townhouse because she had two children. A tenant who qualifies for subsidized housing and a three-bedroom property must be of a certain family size. Unfortunately, the Tenant's two children were apprehended by the Ministry of Children and Family Development in late January 2023, and they have not, to date, been returned to their mother. As such, the Tenant ceased to qualify for the three-bedroom subsidized rental unit after her children were apprehended.

The Tenant was offered a smaller rental unit, and the Tenant initially accepted the offer, but never moved into the rental unit. The Landlord then issued a warning that if the Tenant did not move into the smaller unit that they would serve notice to end the tenancy. As of today's date, the Tenant remains in the three-bedroom rental unit. The Landlord stressed that there is, or was, a qualified family waiting to move in. There is, the Landlord added, a huge waiting list.

On September 30, 2023, the Landlord served the Notice upon the Tenant, in-person. A copy of the Notice was submitted into evidence.

The Tenant understands and acknowledges the Landlord's position as to why the Notice was served. And the Tenant did not dispute the reason for the Notice being served. That having been said, the Tenant's life has been incredibly difficult and anxiety-ridden since her children were taken away. The Tenant suffers from extremely high levels of anxiety, suffers from unexpected anxiety attacks, and her cognitive function are not properly functioning. Last, the Tenant is desperate to get her children back, and does not want to end up homeless.

Analysis

A landlord may end a tenancy of a subsidized rental unit under section 49.1(2) of the Act. A "subsidized rental unit" means (as per section 49.1(1) of the Act) a rental unit that is (a) operated by a public housing body, or on behalf of a public housing body (in this case, the BC Housing Commission), and (b) is 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 dispute, the Tenant is required to demonstrate that she meets the eligibility criteria of having two children to qualify for a two-bedroom rental unit. However, the Tenant ceased to meet the eligibility criteria after her two children were removed from her care in late January or early February.

The Landlord's undisputed oral and documentary evidence establishes, on a balance of probabilities, that the Landlord had a legally valid ground under section 49.1 of the Act for issuing the Notice. Further, upon reviewing the Notice, it is my finding that the Notice complies with section 52 of the Act in form and content.

Given these findings of fact and law, the Tenant's application to cancel the Notice is dismissed without leave to reapply and the Landlord's application for an order of possession is granted. An order of possession is issued with this Decision to the Landlord, who must serve a copy of the order of possession upon the Tenant forthwith.

I have taken the Tenant's difficult situation into consideration and will, in this case, exercise my discretion in giving the order of possession an effective date of January 31, 2024. The Tenant is required to vacate the rental unit no later than this date.

Conclusion

For the reasons given above, the Tenant's application is dismissed, and the Landlord's application is granted.

The Landlord is granted an order of possession, and the tenancy ends no later than on January 31, 2024, at 1:00 p.m.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 3, 2024