



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for failure to qualify for the subsidized rental unit. The tenant and three agents for the landlord participated in the teleconference hearing.

At the outset of the hearing, another party attended as agent for BC Housing, and submitted that the tenant had improperly named BC Housing as one of the respondents in this matter. The agent stated that all of the landlord's business is conducted by the housing society that is named on the tenancy agreement, and BC Housing has no involvement in the tenancy. I therefore amended the application to remove BC Housing as a respondent in this matter.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began at the end of March 2009. The rental unit is a three-bedroom subsidized housing unit. The tenant and her child are the occupants. On March 13, 2009 the tenant signed an addendum to the tenancy agreement, which states, in part, as follows:

These terms form part of the tenancy agreement... and are material and fundamental to the tenancy agreement.

- 1) The residential premises have been rented to the tenant solely on the bases of present availability of the residential premises and despite the fact that the tenant does not meet [the landlord's] eligibility requirements for the residential premises based on income and / or family composition

- 2) If in the future [the landlord] has an applicant who meets the income and / or family composition requirements for the residential premises, the following apply:
 - a. [the landlord] may end the tenancy for the residential premises;
 - b. Where the Landlord has suitable alternative accommodation in the immediate community the notice to end the tenancy will be accompanied with an offer from the Landlord for such suitable alternative accommodation; and
 - c. If the tenant does not accept the alternative accommodation, [the landlord] will be under no further obligation to the tenant.

On May 17, May 26 and June 15, 2011 the landlord wrote letters to the tenant making offers of a two bedroom unit, and each time the tenant refused the alternate accommodation. On June 15, 2011, the landlord also served the tenant with a notice to end tenancy for the reason that the tenant no longer qualified for the subsidized rental unit. The tenant applied to cancel the notice to end tenancy.

The tenant and the landlord submitted documentary evidence and gave testimony on several points. The relevant evidence I considered in reaching my determination in this matter was as follows.

The tenant stated that although she signed the addendum, she did so only because she felt pressured to accept the rental unit. The tenant did not know why she did not meet the eligibility requirements for the rental unit, and she attached a note to the addendum to record her disagreement with the addendum. The tenant did not know that the rental unit was a three-bedroom unit until she first viewed the unit at move-in. The landlord did not include the tenant's note in the evidence they submitted and the tenant did not have a copy of the note.

The tenant further submitted that the landlord did not provide evidence that the landlord had another applicant who meets the requirement for the rental unit. The tenant's understanding of the current situation is that three-bedroom units are currently not in demand.

The landlord's evidence was that the tenant was aware when she signed the addendum that it was for a three-bedroom unit, because the unit is clearly described in the tenancy agreement. The landlord submitted that the tenant ought to be bound by the addendum. The landlord offered the tenant three different alternate accommodations, and the tenant refused to accept any of them. The landlord also stated that they do have an applicant who qualifies for the rental unit.

I note that the landlord did not submit a copy of the tenancy agreement in their evidence; nor did they submit any documentary evidence to support their testimony that they have a qualified applicant for the rental unit. In the three letters offering alternate accommodation, the landlord did not make any mention of having a qualified applicant for the rental unit.

Analysis

I find that the notice to end tenancy is not valid, for the following reasons.

The landlord relies on the terms set out in the addendum to the tenancy agreement for their purported authority to end the tenancy. The addendum states that it forms a part of the tenancy agreement; however, the landlord did not submit a copy of the tenancy agreement as evidence for the hearing. The addendum does not describe the rental unit or provide explanation as to why the tenant does not meet the landlord's eligibility requirements, such as the number of occupants in relation to the number of bedrooms. Presumably such information is contained within the tenancy agreement.

Furthermore, according to the addendum the landlord may end the tenancy if they have an applicant who meets the requirements for the premises, and the landlord did not provide evidence that they had such an applicant. Therefore, the landlord failed to establish that they met the conditions set out in the addendum in order for the landlord to end the tenancy.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

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: July 19, 2011.

Residential Tenancy Branch