Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HAOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a *Two-Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* dated November 28, 2013 and purporting to be effective January 31, 2014.

Request for Adjournment

At the commencement of the hearing an advocate for the tenant advised that the tenant was incapacitated and could not attend the hearing. The person representing the tenant, did not have any data about the application or the landlord's Notice under dispute.

The tenant's application for dispute resolution was filed on December 5, 2013.

Rule 6.1 of the Residential Tenancy rules of Procedure provides that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from **both the applicant and the respondent** is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.

Rule 6.2 provides that, **if the consent of the other party to rescheduling the dispute cannot be obtained**, and the applicant or respondent needs the hearing to be rescheduled to another date because they are unable to attend the dispute resolution proceeding due to circumstances beyond their control, the dispute resolution proceeding must commence at the scheduled time and the party requesting the adjournment can ask the arbitrator to reschedule the dispute resolution proceeding.

This must be done by submitting to the Residential Tenancy Branch, at least three (3) business days before the dispute resolution proceeding, a document requesting that the dispute resolution proceeding be rescheduled and describing the specific circumstances that are beyond the party's control preventing them from attending the dispute resolution proceeding.

The landlord or tenant seeking the adjournment can also have an agent represent him or her to attend the dispute resolution proceeding in order to make a request to the arbitrator to reschedule the dispute resolution proceeding, and to describe the circumstances that are beyond the party's control preventing them from attending the dispute resolution proceeding.

In some circumstances proceedings can be adjourned **after the hearing has commenced**. However, the Rules of Procedure contain a mandatory requirement that the Arbitrator must look at:

- the oral or written submissions of the parties;
- consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- assess the possible prejudice to each party.

At the hearing, the tenant's representative explained that the request for them to attend on the tenant's behalf was sudden and unanticipated. However, no evidence was submitted to verify what the tenant's circumstances were that interfered with the hearing proceedings.

I made the following findings:

- the tenant's request for an adjournment was not received at least 3 days prior to the hearing,
- the other party was not in agreement with an adjournment,

- a delay would unfairly prejudice the other party who is seeking to end the tenancy pursuant to the Notice,
- the tenant has a possible remedy to establish her inability to attend under section 79 of the Act which permits an Application for Review Consideration under certain specific circumstances.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling party. Therefore, the tenant's request for an adjournment was denied. The hearing then proceeded as scheduled.

At the start of the hearing I introduced the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the *Two-Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* supported under the circumstances or should it be cancelled as requested by the tenant?

Background and Evidence

Submitted into evidence were copies of the Two Month Notice, the tenancy agreement, proof of service and a letter from the Ministry dated December 6, 2013 stating that the tenant does not have a dependent child in her care at the present time.

The landlord testified that the tenant has not been eligible to occupy a subsidized unit in the building for approximately 2 years, but the landlord has been extending the eligibility pending custody matter in which the tenant is involved. However, according to the landlord, the tenant's current circumstances make her ineligible to be subsidized and therefore the landlord feels that the tenancy must be terminated, based on the tenant's failure to meet the residency eligibility criteria.

The landlord testified that a *Two-Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* was served on the tenant by posting it on the tenant's door on November 28, 2013.

Analysis: End of Tenancy

Section 49(1) of the Act defines **"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.

I find that, in this tenancy, the tenant is required to demonstrate to the landlord, that they have met eligibility criteria related to income, number of occupants, health or other similar criteria before being found to be entitled to occupy the rental unit.

Section 49(2) permits a landlord, if provided for in the tenancy agreement, to terminate 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.

Section 49 (3) of the Act states that 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.

Section 49(4) of the Act requires a notice under this section to comply with section 52.

A tenant has the right to dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

In the case before me, I find sufficient evidence submitted by the landlord that the tenant must meet qualifying criteria to continue her tenancy and sufficient evidence that the tenant has not met the criteria to qualify to remain in the subsidized rental unit.

Therefore, I find that there are no grounds to cancel the *Two-Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* and the tenant's request to cancel the Notice must be dismissed. Accordingly, I find that the Notice will remain in force.

I find that the landlord posted the *Two-Month Notice to End Tenancy* on the tenant's door on November 28, 2013. I note that section 90 of the Act provides direction for when a document is deemed to have been served. According to 90(c), if given or

served by attaching a copy of the document to a door or other place, the document is deemed to have been served on the 3rd day after it is attached. (My emphasis)

Given the above, I find that the Notice posted on November 28, 2013, is deemed to have been served on December 1, 2013.

Section 53 (1) of the Act states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed in accordance with the Act.

Accordingly. I find that the landlord's Two Month Notice to End Tenancy deemed served on December 1, 2013, would not be effective before February 28, 2014.

I hereby dismiss the tenant's application in its entirety, without leave to reapply.

At the hearing, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order.

I hereby grant the landlord an Order of Possession effective Friday, February 28, 2014 at 1:00 p.m. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The tenant is not successful in the application and the Two Month Notice to End Tenancy for Landlord's Use remains in effect. At their request the landlord is granted an Order of Possession.

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: January 27, 2014

Residential Tenancy Branch