



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aqanttanam Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy given because the tenant does not qualify for subsidized housing.

The tenant and an agent for the landlord society attended the hearing and each gave affirmed testimony. The tenant also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy given by the landlord was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent is the current Executive Director of the landlord housing society and has been for about 2 years. He testified that this month-to-month tenancy began on August 1, 2005 and the tenant still resides in the rental unit. Rent is subsidized from \$1,400.00 per month to the tenant's share of \$216.00 per month payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 2 bedroom suite in a side-by-side duplex and a copy of the tenancy agreement has been provided.

The landlord's agent further testified that on January 14, 2016 he personally served the tenant with a 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit (the notice), a copy of which has been provided. The notice is dated January 14, 2016 and contains an effective date of vacancy of March 31, 2016. The reason for ending the tenancy states: "The tenant no longer qualifies for the subsidized rental unit."

The landlord's agent testified that the rental complex is funded by BC Housing, which is guided by National Occupancy standards as part of the BC Housing policy. The standards specify that there shall be no more than 2 or less than 1 person per bedroom, and single occupants are eligible to apply for bachelor or 1 bedroom units. That is how the size of the unit is determined. The tenant is a single occupant residing in a 2 bedroom unit. The landlord has also provided a BC Housing information document entitled "Over-housing," that the landlord is governed by, which describes procedures for dealing with over-housing based on National Occupancy Standards.

The tenant was allowed to move into the rental unit by a person who was the Executive Director of the landlord prior to the landlord's agent, even though the tenant didn't qualify. The landlord has been working with several people who are over-housed. The tenant was offered a 1 bedroom unit when the notice to end the tenancy was issued but the tenant refused it and said she didn't want to move.

The tenant testified that she asked the landlord to find a 1 bedroom unit for her, but he said he couldn't find one so she let things go. The tenant has been looking, but there are not many vacancies around. Some are not livable.

No one told the tenant that she didn't qualify for a 2 bedroom unit, and the rental unit is in a good location for the tenant's needs, who is in her 70s. The tenant is not disobeying, but if she could find a 1 bedroom unit, she would take it. The tenant seeks till the end of October, 2016 to find suitable accommodation, has been working with BC Housing, and a new unit will become available in September or October, 2016.

The tenant's first witness (KF) testified that she was employed by the landlord society as an Administrative Assistant from 2008 to 2012. During her employment, the witness was told that because the landlord didn't have an appropriate 1 bedroom unit at the time the tenant was offered this unit. This rental unit is 1 ½ bedrooms, not 2 bedrooms, which is a benefit to the tenant so the tenant's son can stay with her when she needs his assistance. The second bedroom is not a full size and suitable for a crib or small bed.

The witness also believes the tenant qualifies under Aboriginal rights, and the tenant is Aboriginal. The landlord has provided information from BC Housing, but all of the funding comes from the Aboriginal Housing Association.

The tenant's second witness (TL) testified that she was the Executive Director of the landlord society from 2002 to 2012.

There are 2 parts to the housing structure: BC Housing which is unsubsidized, and the Aboriginal Housing Management Association (AHMA) which is where the subsidy comes from. The income threshold of the tenant determines the size of the rental unit (by the number of bedrooms). The society housed the tenant, which is often a 2 bedroom unit. There are no 1 bedroom units, but bachelor suites. Although this is not BC Housing, BC Housing carried it for years. The tenant qualifies under the income threshold, which is not under BC Housing. Each year, while employed as Executive Director, the witness submitted a subsidy report to the AHMA.

Tenants are not moved to a bachelor unit from a 2 bedroom unit after 10 years of tenancy, and tenants often have more than 1 bedroom under the AHMA for guests to use when tenants require care. The BC Housing policies do not apply because the funding comes from the AHMA, and the tenant qualifies due to her income threshold.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

The tenant's witnesses and the landlord's agent all have some knowledge of how a rental subsidy is applied for and processed, but I'm not convinced that the tenant is aware of any of that. I have reviewed the tenancy agreement and there is no mention of a qualification for any specific size of rental unit. It also specifies that the tenant will be the only occupant of the rental unit.

I have also reviewed the BC Housing document provided by the landlord and I find that it is an instructional guideline for the society to use where a tenant is over-housed. The landlord's agent testified that the funding for the subsidy comes from BC Housing and the previous Executive Director testified that it comes from the Aboriginal Housing Management Association, and that she submitted a subsidy report monthly to that association. I am not certain if that has any bearing on the qualifications required for

this tenancy. However, the tenant's witness has raised the issue and testified that the tenant qualifies under the income threshold.

In the evidence before me, I am not satisfied that the landlord has established that the tenant no longer qualifies for the rental unit. Therefore, I cancel the 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, and the tenancy continues.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated January 14, 2016 is hereby cancelled and 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: March 30, 2016

Residential Tenancy Branch