



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNQ FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit pursuant to section 49.1;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The rental unit is a 4 bedroom subsidized housing apartment occupied solely by the tenant. The tenancy began on August 1, 1995. The current monthly rent is \$320.00 payable on the 1st day of each month.

The parties were involved in a similar proceeding on May 22, 2012 in which the tenant's application to dispute a similar 2 Month Notice to End Tenancy was resolved by way of settlement whereby the landlord was granted an order of possession effective October 31, 2012.

Following the above decision, on November 19, 2012, the parties executed a mutual settlement agreement and release whereby the relevant terms of that agreement were, in part, as follows:

1. The landlord agreed to not enforce the Order of Possession which was effective October 31, 2012.
2. In or about July 2012, the tenant submitted a transfer request (the “transfer request”) to BC Housing. The parties acknowledge that the tenant’s transfer request is subject to BC Housing rules with respect to refusing a transfer to suitable accommodation on two occasions. If the tenant refuses two offers of suitable units, this agreement is void and the landlord is at liberty to enforce the Order of Possession.
8. The parties will take such steps as are required to implement this settlement agreement in a timely manner.

On September 2, 2016, the landlord issued a new 2 Month Notice to End Tenancy on the grounds the tenant does not qualify for the subsidized rental unit as she is over-housed. The tenant applied to dispute this Notice within the timeline permitted under the Act.

The landlord acknowledges the settlement agreement entered into between the parties in 2012 but argued that it has now been 4 years since the agreement and that clause #8 of the agreement stipulates the parties were to implement the agreement in a timely manner. The landlord submits they have since offered two alternative units which they view as suitable which the tenant has turned down.

On behalf of the tenant, the tenant’s advocate argued that the settlement agreement entered into between the parties in 2012 stipulates that a transfer request was made through BC Housing and the transfer request is subject to BC Housing rules with respect to refusing a transfer to suitable accommodations. The tenant’s advocate submits that the tenant has not been offered, nor has she refused, any alternative housing from BC Housing. It is the tenant’s position that as per the 2012 settlement agreement, only BC Housing may determine what is considered a transfer refusal and the alternative housing offers made by the landlord are not one of the properties listed on the tenant’s transfer request.

On behalf of the tenant, S.S., who is with the BC Public Interest Advocacy Group, testified that she supports the tenant in the 2012 settlement agreement and that she has confirmed with BC Housing that they have not offered any suitable alternative units to the tenant. S.S testified that the tenant is on a high priority list with BC Housing and the tenant is actively seeking alternative housing. S.S. testified that clause #8 in the 2012 settlement agreement was in regards to the timely execution of the settlement agreement not in respect to finding alternative housing. S.S. testified that although BC Housing is not a party to the settlement agreement, in her conversations with BC

Housing, she is aware that the housing registry takes notes and is aware of the 2012 settlement agreement and transfer request.

The tenant testified that she has not viewed any alternative housing units with the landlord since the 2012 settlement agreement. She acknowledged viewing one unit but testified that it was before the settlement agreement. She testified that she has not been offered nor has she refused any alternative housing from BC Housing.

Analysis

Section 49.1 of the Act contains provisions by which a landlord may end the tenancy of a subsidized rental unit, if provided for in the tenancy agreement, with two months' notice if the tenant or other occupant, as applicable, ceases to qualify for the rental unit. A tenant may dispute a Notice under this section by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

The eligibility requirements of a subsidized rental unit are not within the jurisdiction of the Act. The landlord only needs to provide evidence that the tenant no longer qualifies for the subsidized rental unit based on the established eligibility criteria relating to income, number of occupants, health or other similar criteria.

There parties did not dispute the fact that the tenant was currently over-housed as per the eligibility requirements for the subsidized rental unit. However, this case was complicated as a result of the 2012 settlement agreement entered into between the parties. Although the parties are bound by the terms of the 2012 settlement agreement, I find clause #2 of the settlement agreement to be vague and do not accept the tenant's argument that any offer for alternative housing must come from BC Housing. I interpret this part of the agreement as stipulating that the tenant's transfer request was "subject" to BC Housing's rules with respect to refusing a transfer to suitable accommodation on two occasions. The agreement does not clearly specify the offer has to come directly from BC Housing. Neither party submitted a copy of the "transfer request" referred to in the settlement clause.

However, I find the landlord has not established that the tenant has refused two offers of suitable units. The landlord testified that the tenant had refused suitable alternative accommodation which the tenant denied. The landlord provided insufficient evidence with respect to the dates of offers, detailed description of the units offered, or any evidence of refusal by the tenant. The landlord has not met its onus to establish it had

grounds to issue the 2 Month Notice to End Tenancy. Further, the landlord did not submit any evidence with respect to BC Housing rules on refusing a suitable transfer, which the transfer request is subject to.

Accordingly, the 2 Month Notice to End Tenancy dated September 2, 2016, is hereby cancelled and of no force or effect.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenant may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated September 2, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: November 16, 2016

Residential Tenancy Branch