



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL REGION HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPQ, FFL

Introduction

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

- an order of possession because the tenant does not qualify for the subsidized rental unit, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the senior property manager for the landlord company named in this application and that she had permission to represent it at this hearing.

The landlord confirmed that she served the tenant with the landlord's application for dispute resolution hearing package on June 26, 2020, by way of posting to the tenant's rental unit door, where the landlord was present with another landlord's agent and two police officers. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 29, 2020, three days after its posting.

The landlord confirmed that the tenant was served with the landlord's 2 Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit, dated March 18, 2020 ("2 Month Notice"), on March 19, 2020, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 2 Month Notice on March 22, 2020, three days after its posting.

Issues to be Decided

Is the landlord entitled to an order of possession because the tenant does not qualify for the subsidized rental unit?

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

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on May 1, 2016. Monthly rent in the subsidized amount of \$472.00 was payable on the first day of each month. A security deposit of \$280.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord confirmed that the 2 Month Notice, which has an effective move-out date of May 31, 2020, was issued for the following reason:

- *the tenant no longer qualifies for the subsidized rental unit.*

The landlord testified that she issued the 2 Month Notice to the tenant because the tenant no longer qualifies for the subsidized rental unit. She claimed that a social worker informed her that the tenant's child has not been residing with the tenant since December 2019, he is in the care of the Ministry, and would not be returning for the foreseeable future. She said that she cannot transfer the tenant to another unit, which the landlord usually tries to do, because the tenant has a dangerous partner living with her at the unit, where the landlord is required to attend the unit with the police present.

The landlord stated that the tenant pays a subsidized rent based on having a child live with her as an occupant at the rental unit. The landlord provided a copy of the written tenancy agreement which references in addendum A, section 4, that the tenant's child is an occupant at the rental unit. She referenced addendum C which discusses the rent subsidy based on eligibility, the failure of which could result in a 2 Month Notice being issued to the tenant. The landlord provided copies of the landlord's occupancy guidelines and policy 3 of minimum occupancy for the tenant's eligibility for rental supplement. The landlord further provided the provincial housing subsidy guidelines of National Occupancy Standards of the child occupant residing at the rental at least 40% of the time to be a permanent member of the household when determining eligibility and appropriate unit size.

The landlord said that there was a police incident of domestic violence at the rental unit on February 5, 2020. She claimed that on March 16, 2020, the tenant's social worker told the landlord that the tenant did not have any children living with her at the rental unit since December 2019, the child was in the care of the Ministry, and no children would be returned to the tenant for the foreseeable future. She explained that the tenant had a partner living at the rental unit who is dangerous, so it was a risk to the landlord. The landlord provided a copy of an email she sent to the landlord company from March 16, 2020, regarding her conversation with the social worker. She also claimed that she has her own notes and email from the social worker regarding the above. The landlord provided an email, dated April 14, 2020, from the tenant, confirming that the tenant received the 2 Month Notice and did not dispute it within 15 days as required.

Analysis

Sections 49.1(1) and (2) of the *Act* state the following:

49.1(1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means 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.

(2) Subject to section 50 [tenant may end tenancy early] and if provided for in the tenancy agreement, a landlord may end 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.

Based on a balance of probabilities and for the reasons outlined below, I find that the landlord met its onus of proof to show that the 2 Month Notice was issued for a valid reason. I accept the landlord's undisputed evidence, as the tenant did not attend this hearing.

I find that the landlord is a public housing body and the tenant occupied the rental unit and received a rental subsidy based on the number of occupants in the unit. The rental subsidy is indicated in section 3(A) of the written tenancy agreement. I find that the

tenant agreed to have her son occupy the rental unit with her, as indicated in addendum A which forms part of the parties' written tenancy agreement. I find that the tenant agreed and had notice of a rental subsidy based on occupancy requirements, the failure of which could result in a 2 Month Notice, in addendum C which forms part of the parties' tenancy agreement. I find that the landlord's occupancy guidelines and the tenant's eligibility for rental supplement indicate that the tenant must meet the minimum requirements as established by the provincial housing subsidy.

I accept the landlord's undisputed evidence that the tenant does not have her son living with her at the rental unit since December 2019, as he is in the care of the Ministry, and not to be returned for the foreseeable future. I accept that the landlord spoke with the social worker on March 16, 2020 and acted immediately by emailing the landlord company and providing a copy of this email, indicating a notice to end tenancy should be issued to the tenant. The 2 Month Notice was issued on March 18, 2020 and served to the tenant on March 19, 2020. The landlord provided an April 14, 2020 email from the tenant indicating that the tenant was aware of the 2 Month Notice and had not disputed it within 15 days.

The tenant has not made an application pursuant to section 49.1(6) of the *Act*, within fifteen days of being deemed to have received the 2 Month Notice. In accordance with section 49(9) of the *Act*, the failure of the tenant to take this action within fifteen days led to the end of this tenancy on May 31, 2020, the effective date on the 2 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by May 31, 2020.

As this has not occurred, I find that the landlord is entitled to an **order of possession effective at 1:00 p.m. on July 31, 2020**, pursuant to section 55 of the *Act*. The landlord confirmed that the tenant has paid rent for July 2020 to the landlord, so I find that the tenant is entitled to possession of the unit until the end of the month. I find that the landlord's 2 Month Notice complies with section 52 of the *Act*.

As the landlord was successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord **effective at 1:00 p.m. on July 31, 2020**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$100.00 from the tenant's security deposit of \$280.00, in full satisfaction of the monetary award for the filing fee.

The remainder of the tenant's security deposit of \$180.00 will be dealt with at the end of this tenancy in accordance with section 38 of 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: July 21, 2020

Residential Tenancy Branch