Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VERNON NATIVE HOUSING SOCIETY 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 20 minutes. The landlord's agent ("landlord") and the landlord's trainee attended the hearing and were each 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 executive director for the landlord company named in this application and that she had permission to speak on its behalf. The landlord stated that the landlord's trainee was only attending for training purposes and she did not testify, she only observed the hearing.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package on September 11, 2020, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post tracking number verbally during the hearing, claiming that the tracking number indicated that the mail was delivered to the tenant on September 14, 2020. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on September 16, 2020, five days after its registered mailing.

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 June 24, 2020 ("2 Month Notice"), on the same date, 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 June 27, 2020, three days after its posting.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*
> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

During the hearing, when I asked the landlord why she issued the 2 Month Notice to the tenant, she stated that she had never been asked that by any other Arbitrator in previous hearings. When I notified her that she had to prove the validity of the reason on the 2 Month Notice, she stated to her trainee, who was in the same room as her: "see what I mean? Arbitrators!" and then laughed.

When I asked the landlord whether she was making negative comments about me in front of me, she agreed that she was. When I asked her what the issue was, since she made this application and was required to prove her claim, she said that she had a hearing on the day before this hearing and because the tenant did not show up to that hearing, she was granted an order of possession. I notified the landlord that this was a different hearing and I was required to ask questions and determine the validity of the 2 Month Notice in order to make a decision.

I caution the landlord to not engage in the same inappropriate behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and she may be excluded from future hearings. In that case, a decision will be made in the absence of the landlord.

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

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began on January 1, 2019. Monthly rent in the amount of $543.00 is payable on the first day of each month. A security deposit of $650.50 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 August 31, 2020, was issued for the following reason:

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

The landlord stated the following facts. This is a three-bedroom unit and there is only one person, the tenant, living in the rental unit now. The tenant's two daughters were removed by the Ministry in May 2020 and the landlord was notified in June 2020. The tenant is not getting his children back. The occupants in the rental unit "have to fit the size" of the unit. Pages 2 to 4 of the parties' written tenancy agreement state that the tenant and his two children are listed as occupants, if there is a failure to notify the landlord of changes in the occupants, it could result in a notice to end tenancy and any change is material to terminate the tenancy. This is affordable housing, which is hard to find. The landlord "does not have the information" required in order to prove the reason in the 2 Month Notice, but it is "common sense."

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 did not meet its onus of proof to show that the 2 Month Notice was issued for a valid reason. The landlord must issue a 2 Month Notice for a valid reason, as per section 49.1 of the *Act*, in order to end the tenancy.

The landlord did not provide any evidence as to whether the landlord is a public housing body. The landlord did not indicate whether there were eligibility criteria related to income, the number of occupants, health or similar criteria before the tenant entered into the tenancy agreement with the landlord. The landlord did not indicate whether this was a subsidized rental unit. The landlord did not indicate how the tenant ceased to qualify for the rental unit.

The landlord simply indicated that the rental unit is a three-bedroom unit and was only occupied by one person, the tenant, so it did not "fit to size." The landlord pointed to provisions in the parties' written tenancy agreement, which state that tenants could be transferred to larger or smaller rental units, if there was an increase or decrease in the number of occupants in the unit.

The landlord did not indicate whether the tenant pays a rental subsidy. She simply indicated that this is affordable housing, which is difficult to obtain. The landlord did not provide information regarding occupancy guidelines and the tenant's eligibility for any rental subsidy. During the hearing, the landlord agreed that she did not have the information required to prove the 2 Month Notice or this application. She even stated that she could make it clearer in the parties' written tenancy agreement, that instead of transferring tenants when there is a change in the number of occupants in the rental unit, the landlord could indicate that they would be terminating the tenancy.

The tenant did not appear at this hearing and the tenant did not make an application pursuant to section 49.1(6) of the *Act* to dispute the 2 Month Notice. However, I find that the landlord did not issue the 2 Month Notice for a valid reason and the landlord did not meet the criteria required above, as per section 49.1 of the *Act*.

Accordingly, I find that the landlord is not entitled to an order of possession**,** pursuant to section 55 of the *Act*, and this application is dismissed without leave to reapply. I find that the landlord's 2 Month Notice does not comply with section 52 of the *Act*, as it was not issued for a valid reason. The landlord's 2 Month Notice, dated June 24, 2020, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was not successful in this application, I find that it is not entitled to recover the $100.00 filing fee from the tenant.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The landlord's 2 Month Notice, dated June 24, 2020, is 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: October 16, 2020

Residential Tenancy Branch