Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING NON PROFIT RENTAL ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ FFT

Introduction

The tenants applied to dispute a *Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit* (the "Notice") pursuant to section 49.1(5) of the Residential Tenancy Act ("Act"). In addition, they applied to recover the cost of the filing fee, pursuant to section 72 of the Act.

One of the two tenants, and three representatives for the non-profit housing society landlord, attended the hearing. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession of the rental unit?
3. Are the tenants entitled to recovery of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on October 1, 2017. Monthly rent – which is calculated pursuant to eligibility based on income – is $1,275.00. The tenants paid a security deposit of $450.00. There is a copy of the tenancy agreement, along with an addendum, submitted into evidence.

On August 13, 2021, the landlord issued the Notice. A copy of the Notice was in evidence and on page two it indicates that the reason for the Notice being given is that "The tenant no longer qualifies for the subsidized rental unit." There were no issues with respect to the service, form, or content of the Notice.

The landlord's representative (E.S.) testified that the rental unit is a subsidized housing unit. The portion of the rent that the tenants pay is determined annually based on the tenants' income. As required by the tenancy agreement, the tenants must provide specific income information. It is with this information that the landlord then calculates the tenants' portion of rent; the remainder of the rent is paid by the government.

While the tenancy began in October, the "anniversary" on which subsidized rent is calculated for all tenants in the building is June 1. Tenants are given several months' head's up that the landlord will require tenants' information in order to make the subsidy calculations. The tenants in this dispute were given notice in February that certain information and documentation would be required from them.

Despite many reminders, the landlord never received the full information sought. The landlord's representative testified that they received "some information, but not complete information." Therefore, the landlord was unable to calculate the subsidy amount and thus could not, as required, determine whether the tenants continued to qualify for any subsidy.

The landlord's comptroller briefly testified that not only was there insufficient information, but at times the "information conflicted or did not correspond" with other documentation and information. Certain deposits and paystubs did not match up with information contained in the tenants' banking records. The landlord's subsidy department representative then added that as of the date of the hearing, they are still not in receipt of the requested documentation, despite having written "numerous letters" to the tenants.

As for the tenant's perspective, she testified that she simply reviewed a checklist on which it is listed the various documents and information that the landlord requires to conduct a subsidy calculation. Where she and the co-tenant ran into difficulty was with the fact that they now operate a business, an incorporated legal entity, which provides the tenants with a source of income. And this is a difficulty because the tenants could not produce the necessary documents that the landlord requested. She submitted three months' worth of statements for the business, but the landlord told her that this was not the information that is required.

The tenants provided the company's incorporation documents along with copies of T4 and T4As. She argued that these documents should demonstrate a proof of income for her and the co-tenant. Moreover, she added that the landlord has never asked her for anything that she has not sent them.

Last, the tenant testified that if she and the co-tenant do not qualify for a subsidized rental unit then they should at least be able to remain in the rental unit but at market rates. "We should not have to leave," she remarked. Further, the tenant argued that there is nothing in the tenancy agreement saying that she has to vacate if she fails to qualify for subsidized rent.

In rebuttal, the landlord testified that the rental units assigned to tenants are based on family composition. And, that the landlord "never had any issues with getting information on their income . . . this is the first year we've had an issue," the landlord added. Indeed, the landlord was "very willing" to be flexible in working with the tenants in obtaining the necessary documentation. Unfortunately, despite having notified the tenants as early as February 2021, as of today they are still waiting for the required paperwork.

Adding to this testimony, the landlord's comptroller explained that the rental unit is in one of 62 buildings with 3,500 rental units over which the landlord has management. The landlord is under an operating agreement (the "agreement") with the BC Housing Management Commission, and the agreement stipulates that 62% of the rental units must be classified as RGI units. That is, a Rent Geared to Income-based subsidized rental unit. 40% of the rental units must be rented out at "the lower end of market [rates]." This ratio must be maintained as per the agreement, and if a tenant or tenants do not qualify for subsidized rental units then they must vacate, at which point another applicant on the housing registry is considered. There is, the comptroller added, not an option to remain in the rental unit once a tenant fails to qualify for subsidized rent.

Analysis

In an application such as this, where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the reason for the Notice being issued. A "balance of probabilities" means that the arbitrator finds it more likely than not that the facts are as claimed.

The notice to end tenancy in this dispute was issued under section 49.1(2) of the Act:

> 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.

In this dispute, the landlord gave oral and documentary evidence proving that the rental unit is a "subsidized rental unit" for the purposes of section 49.1(1) of the Act and the tenancy agreement. This section of the Act reads as follows:

> "subsidized rental unit" means a rental unit that is
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> (a) operated by a public housing body, or on behalf of a public housing body, and
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> (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.

A "public housing body" means, pursuant to section 49.1(1) of the Act, a prescribed person or organization. Section 2 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003 includes a list of such organizations, and it states that this includes "any housing society […] that has an agreement regarding the operation of residential property with the following: […] the British Columbia Housing Management Commission." In this matter, it is not disputed that the landlord is a housing society operating under an agreement with BC Housing.

The tenancy agreement in this dispute, and in particular the addendum titled "ADDENDUM FOR UNITS WHERE THE RENT IS RELATED TO THE TENANT'S INCOME," clearly and unambiguously states that the rent for the rental unit is based on the tenant's eligibility related to income. The addendum spells out the information required by the landlord on an annual basis. The addendum also states that "The tenant's provision of this information is material and fundamental to this tenancy agreement." In order words, the tenancy agreement is broken, and the tenancy comes to an end, if the tenant fails to provide the required information. Which is to say, contrary to the tenants' position that they ought to be able to stay in the rental unit even if they do not quality for a subsidized rental unit, they cannot.

In carefully reviewing the landlord's documentary evidence, which includes what the tenants did and did not supply in terms of requested information, it is my finding that the tenants have not supplied what was repeatedly asked of them. They submitted some income information, and some that was for a previous tax year. Submitted were a confusing assemblage of documents, but not what the landlord had very clearly asked for. In short, the tenants have not demonstrated to the landlord that they meet eligibility criteria related to income. It is worth noting that I found the landlord and its various employees to be exceedingly patient in their dealings with the tenants and gave them every available opportunity to provide what ought to be fairly straightforward information.

Taking into careful consideration all of the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that pursuant to section 49.1(2) of the Act, the tenants cease to qualify for the rental unit.

Accordingly, the tenants' application to cancel the Notice is dismissed and the landlord's Notice is upheld.

Section 55(1) of the Act states that

> If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
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> > (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
> >
> > (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Here, having reviewed the Notice and finding that it complies with section 52 of the Act in form and content, and, having dismissed the tenants' application and having upheld the Notice, the landlord is granted an order of possession of the rental unit.

A copy of the order of possession is issued in conjunction with this decision, to the landlord.

The tenants' claim for recovery of the application filing fee is dismissed.

Conclusion

The application is hereby dismissed, without leave to reapply.

The landlord is granted an order of possession, which must be served on the tenants and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 22, 2021

Residential Tenancy Branch