



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with the Tenant's application under section 49.1 of the *Residential Tenancy Act* (the "Act") to cancel a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit dated August 29, 2022 (the "Two Month Notice").

The Landlord's agent IC attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that IC and I were the only ones who had called into the hearing.

that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Correction of Landlord

This application initially listed IC as the sole landlord and respondent. IC testified the landlord is BC Housing Management Commission. I find both the tenancy agreement and the Two Month Notice state that BC Housing Management Commission is the landlord. As such, I have replaced IC with BC Housing Management Commission as the landlord and respondent for this application pursuant to section 64(3)(c) of the Act.

Preliminary matter – Service of Dispute Resolution Documents

IC confirmed receipt of the Tenant's notice of dispute resolution proceeding package (the "NDRP Package"). I find the Landlord was sufficiently served with the NDRP Package pursuant to section 71(2)(c) of the Act.

IC testified that the Landlord's documentary evidence was sent to the Tenant via registered mail on October 20, 2022 and returned as unclaimed on November 23, 2022 (tracking number referenced on the cover page of this decision). IC testified that he knows the Tenant is still residing in the rental unit due to an incident involving the police. IC stated that he and support workers have tried to contact the Tenant many times but did not receive a response.

Residential Tenancy Policy Guideline 12. Service Provision states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on IC's testimony and pursuant to section 90(c) of the Act, I find the Tenant is deemed to have received the Landlord's documentary evidence on October 25, 2022.

Preliminary Matter – Tenant's Non-attendance

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant did not attend this hearing for her own application while the Landlord's agent duly attended. As such, I directed this hearing to proceed in the absence of the Tenant.

Issues to be Decided

1. Is the Tenant entitled to cancel the Two Month Notice?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

This tenancy commenced on June 1, 2018 and is month-to-month. Rent is currently \$526.00 per month. A copy of the tenant agreement has been submitted into evidence.

Clause 12(c) of the parties' tenancy agreement states that "Any change in the tenant's household composition and household income is material and may result in the tenant no longer satisfying the landlord's eligibility criteria for the rental unit and, in such event, the landlord may serve a notice to end the tenancy". Clause 15(g) of the tenancy agreement further states that "If the tenant ceases to qualify for the subsidized rental unit, the landlord may end this tenancy agreement by giving the tenant a clear month's notice in accordance with the *RTA*."

IC explained the Tenant had ceased to qualify for subsidized housing for low-income families with children due to the removal of her child by the Ministry of Children and Family Development ("MCFD"). IC testified that the Tenant does not have a disability, is not a senior (age 55+), and is employable, so she would not qualify for any subsidized housing on her own.

IC provided a written statement which explains that the Landlord's building manager had reported the removal of the Tenant's child on July 14, 2022. According to IC's statement, MCFD informed the Landlord on July 26, 2022 that there were "no immediate or short-term plans" for the child to return. The Landlord's evidence includes a letter from the Landlord to the Tenant dated July 28, 2022, in which the Landlord requests the Tenant to provide an expected return date for the child by no later than August 17, 2022. In addition, the Landlord submitted copies of email correspondence summarizing attempts to contact the Tenant.

IC testified he had also spoken with the Tenant in person to request documentation from MCFD regarding the child's return. IC explained the Landlord would not enforce the Two Month Notice if the Tenant could provide the requested documentation. IC testified that the Tenant had promised to follow up, but there was no further contact from the Tenant.

IC confirmed a copy of the Two Month Notice was attached to the Tenant's door on August 29, 2022. IC stated that there was a subsequent inspection of the rental unit during which the Tenant was not present. IC stated the Landlord is seeking an immediate Order of Possession but will continue to work with the Tenant.

Analysis

1. Is the Tenant entitled to cancel the Two Month Notice?

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

Landlord's notice: tenant ceases to qualify for rental unit

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.

Section 49.1(3) requires that the effective date of the notice must be:

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 49.1(4) of the Act further requires the notice to comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

I have reviewed a copy of the Two Month Notice and find that it complies with the requirements found in sections 49.1(3) and 52 of the Act.

The Tenant's application indicates that the Tenant received a copy of the Two Month Notice on August 31, 2022. As such, I find the Tenant was served with the Two Month Notice in accordance with section 88 of the Act on August 31, 2022.

Section 49.1(5) of the Act permits a tenant to dispute a two month notice to end tenancy under this section within 15 days of receiving such notice. Therefore, the Tenant had until September 15, 2022 to dispute the Two Month Notice. Records of the Residential Tenancy Branch indicate the Tenant submitted this application on September 6, 2022. I find the Tenant made this application within the time limit required under section 49.1(5) of the Act.

When a tenant makes an application to dispute a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to justify, on a balance of probabilities, the reasons set out in the notice.

In this case, I am satisfied that the rental unit is a subsidized rental unit within the meaning of section 49.1(1) of the Act. I find the parties' tenancy agreement stipulates that the Landlord may end the tenancy if the Tenant no longer meets the Landlord's eligibility criteria for the rental unit. Based on IC's undisputed testimony and the

undisputed evidence submitted by the Landlord, I find the Tenant ceased to qualify for the rental unit since the Tenant's child no longer resides there.

I conclude the Landlord has established the grounds stated in the Two Month Notice for ending the tenancy. Accordingly, I dismiss the Tenant's application to cancel the Two Month Notice without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55(1) 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

- (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.

Having found the Two Month Notice to comply with section 52 and having dismissed the Tenant's claim to cancel the Two Month Notice, I conclude the Landlord is entitled to an Order of Possession under section 55(1) of the Act.

Since the effective date of the Two Month Notice has already passed, I grant the Landlord an Order of Possession effective two (2) days after service upon the Tenant.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: February 07, 2023

Residential Tenancy Branch