



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNL, FF

Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

The Tenant #1 stated copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the service address noted on the Application, on November 13, 2009. The Tenants submitted a photocopy of the package, with the Canada Post tracking number attached, that was returned to them on December 03, 2009. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Landlord did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether Notices to End Tenancy that were served by the Landlord should be set aside and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Tenants declared that they located a Two Month Notice to End Tenancy for Landlord's Use of Property, naming Tenant #1, on their dining room table on November 01, 2009, which declared that the Tenant must vacate the rental unit on December 31, 2009. The reason for ending the tenancy that was stated on the Notice, was that the all of the conditions for the sale of the rental unit have been satisfied and the purchaser

has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends to occupy the rental unit.

The Tenants declared that they located a Two Month Notice to End Tenancy for Landlord's Use of Property, naming Tenant #2, on their dining room table on November 01, 2009, which declared that the Tenant must vacate the rental unit on December 31, 2009. The reason for ending the tenancy that was stated on the Notice was that the all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends to occupy the rental unit.

The Tenants declared that a Two Month Notice to End Tenancy for Landlord's Use of Property, naming Tenant #1, was posted on the front door of this residential complex on, or about, December 01, 2009. The reason for ending the tenancy that was stated on the Notice was that the all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends to occupy the rental unit.

The Tenants declared that a Two Month Notice to End Tenancy for Landlord's Use of Property, naming Tenant #2, was posted on the front door of this residential complex on, or about, December 01, 2009. The reason for ending the tenancy that was stated on the Notice was that the all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends to occupy the rental unit.

The Tenants declared that the Notices to End Tenancy that were dated December 01, 2009 were posted on a door that leads to the upper rental unit. They declared that this door leads to a foyer inside the house which leads directly to the upper rental unit, which can be accessed via this foyer without passing through any other doors. They stated that there is a door in this foyer that leads to their rental unit but they do not have a key to the door leading into the foyer from outside nor do they have a key to the door leading from the foyer into their rental unit.

Analysis

The purpose of serving Two Month Notice to End Tenancy for Landlord's Use of Property under the *Act* is to notify the person being served of their rights and obligations. The Landlord has the burden of proving that the Tenants were served with the Two Month Notice to End Tenancy for Landlord's Use of Property.

In the absence of evidence to the contrary, I find that the Landlord served the Two Month Notice to End Tenancy that was dated October 31, 2009 to each Tenant by leaving it on their dining room table. I find that the Landlord has not properly served the Tenant with the Notice to End Tenancy, pursuant to section 88 of the *Residential Tenancy Act (Act)*. Although section 88(g) of the *Act* allows a Notice to End Tenancy to

be served by **attaching a copy to a door or other conspicuous place at the address at which the person resides**, I find that leaving it on a dining room table does not constitute leaving it in a conspicuous place. I find that tenants cannot reasonably be expected to receive important documents on their dining room table, as the document could be lost in some circumstances. I find that this is particularly true of documents from a Landlord when the Landlord has not accessed the rental unit with proper authorization or proper notice.

In the absence of evidence to the contrary, I find that the Landlord served the Two Month Notice to End Tenancy that were dated December 01, 2009 to each Tenant by attaching it to a door that is not used by these Tenants to access their rental unit. I find that the Landlord has not properly served the Tenant with the Notice to End Tenancy, pursuant to section 88 of the *Residential Tenancy Act (Act)*. Although section 88(g) of the *Act* allows a Notice to End Tenancy to be served by **attaching a copy to a door or other conspicuous place at the address at which the person resides**, I find that leaving it on a door that is not used to access the rental unit does not constitute leaving it in a conspicuous place. I find that tenants cannot reasonably be expected to receive important documents that are left on a door that they never use to access their rental unit. Although the Tenants can technically access their rental unit through this door, the fact that they were not provided with a key to this door and that the door provides direct access to someone else's residence causes me to conclude that this is not a conspicuous place.

The Landlord did not attend the hearing to produce evidence to show that the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends to occupy the rental unit

Conclusion

I find that a Landlord is obligated to serve a Two Month Notice to End Tenancy in accordance with section 88 of the *Act* and that in these circumstances none of the Notices were served in compliance with section 88 of the *Act*.

Even if I were to deem that these Notices were served in accordance with the *Act*, I would set aside the Notices to End Tenancy because the Landlord did not attend this hearing to establish that all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends to occupy the rental unit. On this basis I grant the Tenants' application to set aside the Notices to End Tenancy that were dated October 31, 2009 and December 01, 2009.

The Landlord retains the right to file another Two Month Notice to End Tenancy 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: December 21, 2009.

Dispute Resolution Officer