



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SENTRAAL 89 INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF, O

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy, to recover the filing fee and for other considerations.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on May 8, 2013. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. What other consideration are there?

Background and Evidence

This tenancy started on July 1, 2012 as a tenancy/employment arrangement and then became a tenancy agreement in November, 2012 and then was renewed with this tenancy agreement started February 1, 2013 as a fixed term tenancy with an expiry date of May 31, 2013. The tenancy agreement made the provision that at the end of the tenancy agreement on May 31, 2013, the tenancy may continue on a month to month basis or for another fixed term. Rent is \$1,550.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit.

The Landlord said he had his agent J.M. serve the Tenants with a letter dated April 30, 2013 that indicated he would not be renewing the tenancy agreement and the tenancy would end May 31, 2013 as in the fixed term tenancy agreement signed January 11, 2013. The Agent said her husband served the letter by leaving it in the mail box of the Tenants rental unit. The Landlord continued to say that he does not want to continue the tenancy, but he does understand the letter not renewing the agreement may have been served late to end the tenancy on May 31, 2013.

The Tenants said they have been bounced around from one agreement to another and they feel as though they have been misrepresented in this tenancy. The original agreement was to receive free rent for the Tenants to manage the house as a B&B in conjunction to a medical enterprise. The Tenants continued to say the agreement then had rent of \$2,500.00 per month and now has rent of \$1,550.00 per month. As well the Tenant said it was their understanding that they could live in the unit as long as they wanted to.

The Tenants said they filing their application because they do not want to move and they feel the Landlord did not give them proper notice or a Notice on the correct form. The Tenants said they understood that the tenancy agreement was for a fixed term ending May 31, 2013 with a provision that the tenancy may continue on a month to month basis.

The Tenants said in their closing remarks they do not feel it is fair that they have to move out of the rental unit and they understand they can make an application for compensation if they feel they have grounds. As well the male Tenant asked the Landlord if they could move out on July 30, 2013.

The Landlord said in closing that he is frustrated with this tenancy and that he feels he has tried very hard to make things work, but it has not worked for him. As a result the Landlord said he is offering the Tenants until July 15, 2013 to move out of the rental unit.

The Tenants accepted the Landlords offer of July 15, 2013 to end the tenancy.

Analysis

Section 44 of the Act says how a tenancy may end. A fixed term tenancy ends on the expiry date if the Parties confirm the expiry date one month before the day in the month the rent is due. In this situation the Landlord confirmed the expiry date and that the tenancy would not be renewed in his letter of April 30, 2013, but the letter was delivered by posting it in the mail box on April 30, 2013, which under section 90 of the Act deems the Tenants were served the letter three days after deliver or on May 3, 2013. Consequently the letter stating the tenancy agreement would not be renewed has an effective vacancy date of June 30, 2013. In effect the fixed term tenancy with the expiry date of May 31, 2013 renewed as a month to month tenancy for one month. The letter to end the tenancy given by the Landlord's agent to the Tenants on May 3, 2013 is now in effect for June 30, 2013.

As both parties agreed to the tenancy continuing until July 15, 2013, I find the tenancy will end on July 15, 2013 and as a result I dismiss the Tenants' application to cancel a Notice to End Tenancy as the letter to end the tenancy dated April 30, 2013 is valid and in full effect.

As the Tenants have not been successful in this matter I order the Tenants to bear the cost of the filing fee of \$50.00 which they have already paid.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

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: June 04, 2013

Residential Tenancy Branch

