Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, FF

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the Act) to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated October 19, 2014, with an effective date of December 31, 2014. The application further requests recovery of the filing fee.

Both parties attended the hearing. The tenant was aided by an advocate. Both parties and were given opportunity to settle their dispute, present all relevant evidence and testimony in respect to the application and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for valid and sufficient reason.

Issue(s) to be Decided

Is the notice to end tenancy valid?
Should the Notice to End dated October 19, 2014 be set aside?

Background and Evidence

I have benefit of a copy of the undisputed tenancy agreement. The agreement was signed by both parties September 11, 2014 and started September 15, 2014. The agreement is for a fixed length of time of 1 year ending September 15, 2015. Rent is payable on the 1st of each month in the amount of $800.00.

The tenant submitted a copy of the Notice to End. The landlord agrees they issued the notice for the reason they want to occupy the rental unit themselves.

The tenant disputes the Notice to End as they cannot and do not want to move. Regardless, they argue that on the basis of Section 49(2)(c) of the Act the landlord may not issue such a notice. The landlord acknowledged they understood the relevant legislation advanced by the tenant and was hopeful of a mutual settlement. The landlord and tenant briefly discussed their dispute but were not able to mutually resolve it.

Analysis

Section 49 of the Act, in relevant part, states as follows; **(emphasis mine)**

49 Landlord's notice: landlord's use of property

> (2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date **that must be**
>
>> (a) not earlier than 2 months after the date the tenant receives the notice,
>>
>> (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.**
>
> (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I find the parties have a *fixed term* tenancy agreement which specifies the tenancy ends September 15, 2014. As a result, I accept the tenant's argument in this matter. I am unable to establish that the landlord issued the tenant a valid Notice to End.   Therefore, **I Order** the Notice to End dated October 19, 2014 is cancelled**,** or set aside. If necessary, the landlord is at liberty to issue another new valid Notice to End for valid reason.

The tenant is entitled to recover their filing fee of $50.00.

Conclusion

The tenant's application **is granted**. The landlord's Notice to End is **set aside and is of**

no effect. The tenancy continues.

The tenant is authorized to deduct **$50.00** from a future rent in satisfaction of their monetary award respecting the filing fee.

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 02, 2014

_____
Residential Tenancy Branch