



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL

Introduction

This hearing dealt the tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use* (the Notice). Both parties appeared at the hearing and had an opportunity to be heard.

The Notice is dated June 1, 2008; however, the tenant did not file an application for dispute resolution until August 21, 2008.

Issue(s) to be Decided

1. Whether the Notice is valid and served upon the tenant in accordance with the requirements of the Act.
2. Whether the tenant disputed the Notice within 15 days of receiving the Notice, if applicable.
3. Whether there is a basis to cancel the Notice, if applicable.

Background and Evidence

The tenant testified that the landlord's husband told the tenant on June 27, 2008 that the landlord's family would be moving in to the rental unit and indicated the tenant would have to vacate the rental unit. The tenant testified that she requested that the landlord serve her with a proper Notice to end the tenancy and that it was not served upon her until August 7, 2008.

The landlord testified that the Notice was served upon the tenant on June 1, 2008 and that the landlord could provide a witness to confirm the landlord's version of events.

The Notice was provided as evidence prior to the hearing. The Notice is dated June 1, 2008 and has an effective date of September 1, 2008. The Notice does not indicate a reason for ending the tenancy in the space provided on page 2 of the Notice. Upon enquiry of the landlord at the hearing, the landlord testified that friends or distant family members of the landlord were supposed to move in to the rental unit and that those people were now having to rent elsewhere because the tenant has not vacated the rental unit.

The tenant testified that in mid-July an appraiser came to see the house and the tenant was under the impression the house may be going up for sale.

Analysis

Where a tenant receives a Notice under the Act, the tenant has a certain amount of time to dispute the Notice, depending on what type of Notice is served. The parties were in disagreement as to when the Notice was served upon the tenant; however, I make no determination as to when it was served upon the tenant as I have found the Notice to be invalid under the Act.

The landlord's reason for wanting to end the tenancy is not a reason permitted under the Act. Section 49 permits a landlord to end a tenancy with two full month's notice where the landlord or a "close family member" of the landlord intends in good faith to occupy the rental unit. Section 49 of the Act defines "close family member" to mean a landlord's spouse, father, mother or child; or, the father, mother or child of the landlord's spouse. Therefore, I do not find that the landlord inadvertently failed to tick the correct box on the required form, but, rather, the reason the landlord wanted to end the tenancy is not a permissible reason and the landlord could not complete the form as required.

Any Notice to end a tenancy that is issued by a landlord must comply with section 52 of the Act in order to be effective. Section 52 provides that the Notice be in the approved form and state the grounds for ending the tenancy, among other requirements.

In light of the above, I find that the Notice issued to the tenant does not comply with section 52 of the Act as it does not provide a reason for ending the tenancy and I do not amend the Notice since the reason for ending the tenancy is not permissible under the Act. Since the Notice was invalid from the time it was created, it is a moot point whether the tenant disputed the Notice within the time limits of the Act.

In summary, the Notice that is the subject of this hearing is invalid and not effective on the tenant. Therefore, the Notice has no effect on the tenancy and the tenancy continues until such time it ends under the Act.

Conclusion

The Notice to End Tenancy for Landlord's Use is set aside and the tenancy continues.

September 17, 2008

Date of Decision