



Dispute Resolution Services

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

Decision

Dispute Codes: (CNL), CNC, MT, O

Introduction

This matter dealt with an application by the Tenant for more time to cancel a Notice to End Tenancy and to cancel a One Month Notice to End Tenancy for Cause. As there was only a Two Month Notice to End Tenancy served on the Tenant, I find that she made an error on her application when she applied to cancel a One Month Notice. For this reason, I find this is an obvious error and pursuant to s. 64(3)(c) of the Act, the Tenant's application is amended accordingly.

Issue(s) to be Decided

1. Are the Landlords entitled to end the tenancy?

Background and Evidence

This tenancy started approximately 3 years ago. On or about November 30, 2008, the previous owners of the rental property served the Tenant with a Two Month Notice to End Tenancy for Cause dated November 23, 2008 to take effect on January 31, 2009. No grounds were indicated on the Notice however, the previous owners advised the Tenant that they were selling the rental unit. The agreement of purchase and sale indicates that ownership of the property was to transfer to the new owners (the "Landlords") on February 2, 2009.

The Tenant claimed that she discovered sometime in mid-December, 2008 that the new owners (the "Landlords") might be interested in renting the rental unit so she contacted them to find out. The Landlords advised the Tenant that they might be interested in continuing the tenancy at a higher rate of rent but asked her to provide them with references. The Tenant said she did not realize at first that she had an incorrect telephone number for the Landlords until she did not receive any response to her messages. As a result, the Tenant contacted the Landlords' realtor at the end of January, 2009 and got their correct telephone number. When the Tenant finally contacted the Landlords, they advised the Tenant that they were no longer interested in renting the rental unit to her because they wished to do renovations to it. The Tenant said this was the first time the Landlords had mentioned doing renovations.

Analysis

Section 49(8) of the Act says that a tenant has 15 days after the date she receives a Notice to End Tenancy (under s. 49) to apply for dispute resolution to dispute the Notice. If a tenant fails to dispute the notice, she is conclusively presumed to have accepted the tenancy will end on the effective date of the notice and must vacate the rental unit by that date. However, section 66(1) of the Act says that the director may extend a time limit established under the Act but only in exceptional circumstances.

In this case, I find there are exceptional circumstances that warrant extending the time limit for the Tenant to apply to set aside the Two Month Notice. In particular, I find that the Tenant did not apply to set aside the Notice by December 15, 2008 because she reasonably believed the Landlords would continue the tenancy. I find that it was not until approximately January 27, 2009 that the Landlords advised the Tenant that they were not willing to continue the tenancy and were relying on the 2 Month Notice issued by the previous owners/sellers of the rental property.

Section 52 of the Act states that in order to be effective, a notice to end tenancy must be in writing and must (among other things) state the grounds for ending the tenancy. I find that the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 23, 2008 does not state the grounds for ending the tenancy and for that reason, it is invalid and of no force and effect. If the Landlords require vacant possession of the rental unit to do renovations or repairs, they will have to serve the Tenant with a new Two Month Notice which sets out those grounds.

Conclusion

The Tenant's application is allowed. The 2 Month Notice to End Tenancy for Landlord's Use of Property is of no force and effect and as a result, the tenancy will continue.