

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for the landlord's use of property and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, hand delivered by the tenant to the landlord on March 17, 2009 at 11:05 a.m. The landlord signed receipt of the documents.

Both the landlord and tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to cancel a notice to end tenancy.

Background and Evidence

The tenancy is a month to month tenancy which began September 1, 2007 with rent of \$1,300.00 payable on the first of each month. The tenant paid a security deposit of \$650.00 on August 28, 2007.

The landlord issued a 1 month notice to end tenancy on March 14, 2009 to comply with an order of a municipal government authority. The landlord testified that the municipality issued them a notice on March 12, 2009 to either occupy the rental unit and have only one tenant, or have only one rental unit and dismantle the secondary suite. The house currently consists of an upper rental suite and a separate lower rental suite which is in violation of the municipal by-law.

The landlord testified that the notice to end tenancy was served personally to the tenant on March 14, 2009 during the afternoon. The tenant confirmed receipt of the notice.

The landlord testified that they own two homes, the one they are currently occupying and the rental home and that they are now forced to sell one of the homes. The landlord stated that they have accepted an offer on the home they are currently residing in and that there was only one subject to sale, financing, which has now been removed. The landlord agreed to fax the Residential Tenancy Branch a copy of the accepted offer to purchase, as evidence in support of their claim that the landlords will be moving into the upper floor of the rental house. The tenant gave her approval for the Dispute Resolution Officer to receive this document as evidence from the landlord.

The tenant testified that she was told by an employee of her local Residential Tenancy Branch that the landlord used an old form to give the notice, and that the landlord should be issuing the tenant a two month notice to end tenancy if the landlord wanted to evict her so they could move in. The tenant also stated that she was told that the Residential Tenancy Branch did not have to comply with municipal legislation.

The tenant has requested additional time to find another place to move into.

The landlord testified that the municipality granted the landlord an extension to May 15, 2009 before enforcing the daily fines for non-compliance of the municipal order because they were able to provide the municipality proof of the dispute resolution hearing scheduled for today.

A discussion followed whereby the landlord and tenant came to an agreement that if the tenant paid ½ a months rent of \$650.00 by 4:00 pm this afternoon then the landlord would allow the tenant to stay in the rental unit until 1:00 p.m. on Friday May 15, 2009.

The landlord requested an Order of Possession effective May 15, 2009.

The tenant testified that she has already given the landlord a forwarding address, in writing, and has requested that the landlord send her security deposit to this address.

Analysis

When a notice to end tenancy is issued to a tenant under section 47(1)(k) of the *Act*, the landlord bears the burden of proving the “good faith” requirement to end the tenancy. The required proof imposes a two part test which first stipulates the landlord must truly intend to comply with an order of a municipal government authority, and secondly the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. Based on the documentary evidence submitted by both the tenant and the landlord, and the verbal testimony, I find that the landlord has satisfied the requirements to prove the good faith requirement and grant an Order of Possession for the mutually agreed upon date of May 15, 2009.

The documentary evidence provides a copy of the notice to end tenancy that was given by the landlord to the tenant which was questioned by the tenant as not being the correct form. Although the form used is not the most current version of the notice to end tenancy, I find that the form meets the requirements of section 52 of the *Residential Tenancy Act* which stipulates the form and content of a notice to end tenancy.

In relation to the issue of which notice was to be used, either the 1 Month Notice to End Tenancy to comply with a municipal order or a 2 Month Notice to End Tenancy for landlord’s use of the property, based on the documentary evidence and verbal testimony I find in favour of the landlord’s claim that the notice to end tenancy was

issued based on the issuance of the municipal order and had the municipal order not been issued, then the landlord would not be issuing a notice to the tenant. I find that the 1 Month Notice to End Tenancy under section 47(1)(k) was the proper notice to issue and that there is no provision for tenant compensation under this section of the *Act*.

As the tenant was not successful in her application, I cannot find in favour of her request to recover the filing fee for her application.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **May 15, 2009**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the tenant's application to recover the filing fee from the landlord for this application.

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: May 05, 2009.

Dispute Resolution Officer