



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing dealt with the tenants' application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property*, Orders for the landlord to comply with the Act, regulations or tenancy agreement, and recovery of the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard.

Issues(s) to be Decided

1. Are there grounds to cancel the Notice to End Tenancy?
2. Order for the landlord, if necessary.
3. Award of the filing fee.

Background and Evidence

The parties provided undisputed evidence that the tenancy commenced June 1, 2009 and that the tenancy is for a fixed term set to expire May 31, 2010. On July 28, 2009 the landlord served the tenants with a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice). The Notice has an effective date of September 30, 2009 and indicates the reason the landlord is ending the tenancy is that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant confirmed there were no other issues to be resolved with this hearing. The landlord acknowledged that he has subsequently learned he could not issue a 2 Month Notice where a tenancy is still in the fixed term period.

Analysis

Section 49 of the Act provides for ways a landlord may end a tenancy for landlord's use of property. Section 49(2) provides for the effective date of a Notice issued under section 49 and states that



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(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

[my emphasis]

Since the tenancy is for a fixed term with an expiry date of May 31, 2010, pursuant to the requirements of section 49(2)(c) the effective date on the Notice issued by the landlord can be no earlier than May 31, 2010. Although an incorrect effective date is automatically changed to comply with the Act under section 53, during the hearing the landlord did not indicate an intention to end the tenancy as of May 31, 2010 or that necessary permits would be valid after May 31, 2010; therefore, I set aside the Notice with the effect that this tenancy shall continue in accordance with the terms of the tenancy agreement.

The landlord is at liberty to issue another 2 Month Notice with an effective date of May 31, 2010 or later if the landlord wishes to pursue ending the tenancy for landlord's use. The tenants are informed that the tenants' retain the right to dispute any Notice to End Tenancy subsequently served upon them and if the tenancy ends for landlord's use, the tenants are entitled to compensation under section 51 of the Act.

I do not find it necessary to issue any orders upon the landlord for compliance as setting aside the Notice to End Tenancy resolves the dispute between the parties. I do award the filing fee to the tenants. The tenants are authorized to reduce a subsequent month's rent by a one time deduction of \$50.00 and the landlord must consider the rent paid in full.

Conclusion

The 2 Month Notice to End Tenancy was cancelled with the effect that this tenancy shall continue. The tenants are awarded the filing fee and are authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award.

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: September 29, 2009.

Dispute Resolution Officer