

DECISION

Dispute Codes MT, CNL, FF

Introduction

This hearing dealt with cross applications to a dispute between the tenant and landlord regarding a notice to end the tenancy for the landlord's personal use.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel the 2 Month Notice to End the Tenancy for Landlord's Use of Property or if the landlord is entitled to an Order of Possession; whether the tenant's are entitled to additional time to make an application to cancel the notice; if the tenant is entitled to a monetary order to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

While this was scheduled as a cross application the landlord abandoned her application for a hearing regarding the end of the tenancy and return of the filing fee.

Background and Evidence

Both parties agreed that the tenancy began as a fixed term tenancy on December 24, 2008 scheduled to end on June 30, 2009. The tenancy agreement did indicate that the tenancy may continue upon the expiration of the fixed term as a month to month tenancy. Rent due on or before the 1st day of the month in the amount of \$1300.00 per month and a security deposit was paid on December 23, 2008 in the amount of \$650.00.

Documentary evidence submitted by the tenant includes:

- A note from the landlord dated June 4, 2009 indicating that she wants to end the tenancy at the end of the fixed term (June 30, 2009) so that she can move into the unit. The landlord offers the tenants to leave at the end of June or the end of July, 2009.
- Email correspondence between the tenants and landlord dating between April 8 and July 30, 2009 regarding real estate showings.
- An advertisement from a realtor for this address printed from the internet.
- A copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 23, 2009.

Residential Tenancy Branch
Ministry of Housing and Social Development

- Registered mail labels dated June 4, 2009 and June 23, 2009 addressed to the tenants at the dispute address.
- A summary of the details of the dispute including an outline of some events subsequent to receiving the notice. This summary includes a list of tenant requests for this hearing that include: Cancel the Notice to End Tenancy, Consideration to double rent monetary order if sale of the condo is imminent; and recovery of filing fee.

The landlord testified that this was her first time as a landlord and was unfamiliar with the processes required to end a tenancy so she provided the tenants with the letter dated June 4, 2009. She indicated that it was the tenant who pointed her towards the Residential Tenancy Branch website to get the proper form. This was confirmed in the tenants' documentary evidence.

The landlord further testified that she had no intention of selling the condo but that she had just sold her house and was planning to move into the condo but that the condo had been listed as it is tied to another property. She indicated she was uncertain what she would do if she had received an offer on the disputed unit, but that the listing has now ended.

The landlord further testified that she sent the 2 Month Notice to End Tenancy to the tenants via registered mail on June 23, 2009. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

The landlord indicated that she had thought that the tenants had accepted the notice since they had not paid rent for the month of August as allowed under Section 51 (1) (1.1) and there had not been any communication between herself and the tenants. The landlord is requesting an Order of Possession.

The tenants confirmed they did not pay rent for August because they thought it was their last month in the tenancy. The tenants indicated that it was after this that they reviewed the 2 Month Notice to End the Tenancy and noted that there were no reasons as to the landlord's use checked on page 2 of the Notice. The tenant also testified they were researching issues until such time as they submitted their application to the Residential Tenancy Branch on August 25, 2009.

Analysis

Section 49 (3) of the *Act* states a landlord may end a tenancy if the landlord intends in good faith to occupy the rental unit, I am satisfied by the documentary evidence and the landlord's testimony that is her intention.

The *Act* also states in Section 49 (7) that a landlord wishing to end a tenancy under Section 49 must give notice of such and that notice must comply with Section 52, in particular, state the grounds for ending the tenancy. This is the primary issue disputed by the tenants in this case.

I find, however, the grounds were expressed to the tenants in the note dated June 4, 2009 from the landlord to the tenant, allowing the tenants almost three months notification. Section 68 (1) of the *Act* states that “the director may amend the notice if satisfied that:

- a) The person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- b) In the circumstances, it is reasonable to amend the notice.

Section 49 (8) of the *Act* and the 2 Month Notice to End Tenancy for Landlord’s Use of Property both state a tenant may dispute a notice to end tenancy within 15 days of receiving the notice. Section 49 (9) further states that if the tenant does not make an application in accordance with subsection (8), the tenant:

- a) Is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- b) Must vacate the rental unit by that date.

By the tenants’ action of not filing an Application for Dispute Resolution and not paying rent for the month of August, the tenant accepted the Notice to end the tenancy effectively on July 10, 2009. It is not clear as to why the tenant waited so long to submit an application since the tenant had doubts to the validity of the notice in late July or early August. The landlord, in light of the fact that it is the first week of October, has agreed to let the tenants remain until the October 31, 2009.

I will draw both parties attention to Section 59 (2) (b) that states if the rental unit is not used for the stated purpose in the Notice to End Tenancy for at least 6 months beginning within a reasonable period after the effective date of the notice (in this case August 31, 2009) the landlord or the purchaser must pay the tenant an equivalent of double the monthly rent payable under the tenancy agreement.

During testimony the landlord indicated that she had incurred substantial costs because of her inability to access the disputed unit to move in as she had planned beginning in September, 2009. While not considered in this hearing, the landlord is at liberty to apply for dispute resolution for any financial losses.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

Based on my findings above I dismiss the tenant's application for additional time to make an application to cancel the Notice to End Tenancy for Landlord's Use of Property. I further dismiss the tenant's application to cancel the Notice to End Tenancy. Finding the tenant unsuccessful in their application to cancel the Notice to End Tenancy I also dismiss their application for a monetary order for recovery of the filing fee.

I find that the landlord is entitled to an Order of Possession effective October 31, 2009. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: October 05, 2009.

Dispute Resolution Officer