



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNL, DRI

Introduction

The tenant provided affirmed testimony that on November 4, 2009 before noon, he personally served the landlord with copies of the Application for Dispute Resolution and Notice of Hearing at the landlord's residence.

These documents are deemed to have been served in accordance with section 89 of the Act, however the landlord did not appear at the hearing.

Preliminary matters

This conference call hearing was scheduled to commence at 10:30 am. The tenant did not enter the hearing until 10:38 am, at which point he explained that he had experienced difficulty with his pass code. The tenant stated he called the Telus operator, was given an alternate number and had to make a numerous attempts to enter the hearing.

The tenant submitted late evidence to the Residential Tenancy Branch on November 24, 2009. I have considered the tenancy agreement and the previous dispute resolution decision dated October 13, 2009 as the landlord would be in possession of these documents and; therefore, would not prejudice the landlord. During the hearing I asked the tenant to submit a copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on October 30, 2009. The tenant submitted a copy of this document within two hours of the conclusion of the hearing.

The tenant testified that when he first moved into this rental unit he loaned the landlords \$60,000.00 and held a second mortgage on the house. The tenant testified that over one year ago this mortgage was discharged. The tenant testified that he has invested \$30,000.00 in the basement suite by making improvements and that his rent in the sum of \$803.17 is set at a level meant to compensate for the investment he has made. The tenant stated that the term of his tenancy agreement will effectively allow him to recoup the cost of improvements he made to the suite. I find that he tenant does not have an ownership interest in the home, that a tenancy has been created and that jurisdiction is established under the Residential Tenancy Act.

Issue(s) to be Decided

Should the Notice to End Tenancy for Landlord's use of Property issued on October 30, 2009 be cancelled?

Has the landlord attempted to impose an illegal rent increase?

Background and Evidence

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That he has an 8 year fixed-term tenancy agreement with the landlord, which is to terminate on January 31, 2015;
- That the landlord has made two previous attempts to evict the tenant; both of which were dismissed by a dispute resolution officer; and,
- That the last attempt to evict the tenant resulted in an October 2009 hearing where all reasons for cause were dismissed and the Notice to end tenancy was cancelled.

The tenant testified that he believes the landlord is harassing him as they want to sell the home. The tenant testified that he has had to call the police to intervene as the landlord has repeatedly approached him requesting rent increases in the sum of \$400.00 per month. The tenant testified that the tenancy agreement clause indicating the right of the landlord to rent increases was deleted and initialed by each party.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the tenant has provided sufficient evidence to show that the tenancy should not end. I base this decision on section 44 of the Act which provides:

44 (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];

- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

(Emphasis added)

Further, Residential Tenancy Branch guidelines suggest that during a fixed term tenancy neither party may end a tenancy, except for cause. I find that the landlord has breached the Act by attempting to evict a tenant who is entitled to remain in the rental unit January 31, 2015. The landlord failed to attend this hearing to support the Notice to end tenancy; however, the landlord is only at liberty to provide Notice to end this fixed-term tenancy for cause.

In relation to the tenant's claim that the landlord is attempting to increase the rent in breach of the Act, I find that there is no evidence before me of any rent increase as required under section 42 of the Act. If the landlord chooses to issue a notice of rent increase in the approved form, the tenant is at liberty to make application to dispute this notice, based on his understanding of the tenancy agreement signed between the parties on February 26, 2007.

The tenant has raised the issue of possible harassment by the landlords. The tenant is at liberty to seek remedies under the Act if he believes the landlord's are breaching his right to quiet enjoyment.

As the tenant's application has merit I find that he is entitled to filing fee costs.

Conclusion

The Notice to End Tenancy for Landlord's Use, issued on October 30, 2009 is cancelled and of no force or effect. This tenancy shall continue.

As the tenant is entitled to filing fee costs he may deduct \$50.00 from the rent owed on the next date that rent is due.

The tenant is at liberty to make application for dispute resolution should the landlord provide him with a notice of rent increase in the approved form.

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: November 30, 2009.

Dispute Resolution Officer