

Decision

Dispute Codes: CNL, FF

Introduction

This hearing dealt with the tenant's application to cancel the landlord's 2 month notice to end tenancy for landlord's use of property, in addition to recovery of the filing fee. The tenant participated in the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issues to be decided

- Whether the tenant is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the 1 year long fixed term of tenancy began on May 23, 2009. Rent in the amount of \$1,800.00 is payable on the first day of the month, and a security deposit of \$900.00 was collected on or about May 23, 2009.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated September 28, 2009. A copy of the notice was submitted into evidence. The date shown on the notice by when the tenant must vacate the unit is December 5, 2009. Subsequently, the tenant filed an application to dispute the notice on October 5, 2009.

Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated September 28, 2009. I further find that the tenant disputed the notice within 15 days following its receipt by filing an application for dispute resolution.

Section 49 of the Act speaks to **Landlord's notice: landlord's use of property**. In particular, section 49(2)(c) of the Act provides as follows:

49(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

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

Clearly the proposed end to tenancy of December 5, 2009 which is shown on the landlord's notice, is approximately 6 months in advance of the "date specified as the end of the tenancy," or 1 year after May 23, 2009.

Conclusion

Pursuant to all of the above, I hereby cancel the landlord's 2 month notice to end tenancy for landlord's use of property. The tenancy therefore continues in full force and effect.

As the tenant has succeeded in this application, I hereby order that the tenant may withhold **\$50.00** from the next regular payment of monthly rent in consideration of his application to recover the filing fee.

DATE: November 18, 2009

Dispute Resolution Officer