

Decision

Dispute Codes: MT, CNL

Introduction

This hearing dealt with an application from the tenant for more time to make an application to cancel a notice to end tenancy, and cancellation of the landlord's 2 month notice to end tenancy for landlord's use of property. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to the above under the Act

Background and Evidence

There is no written residential tenancy agreement in place for this month-to-month tenancy which began approximately 4 years ago. Rent in the amount of \$650.00 is payable in advance on the first day of each month. No security deposit or pet damage deposit were ever collected.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated October 1, 2009. The notice was served by posting on the tenant's door on that same date. A copy of the notice was submitted into evidence. The reason shown on the notice for its issuance is as follows:

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 disputed the notice by filing an application for dispute resolution on October 15, 2009.

The landlord stated that his intention is to undertake renovations and repairs of the unit. The tenant testified that his rent has been paid up to the end of November 2009, and that he plans to finish vacating the unit on December 1, 2009. In the meantime, the landlord did not make an oral request for an order of possession.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated October 1, 2009. As the notice was posted on the tenant's door on that same date, he is deemed to have received the notice on October 4, 2009. The tenant filed his application for dispute resolution on October 15, 2009, which is within the 15 day period permitted following his receipt of the notice. Accordingly, the tenant is not required to apply for more time to apply to cancel the notice.

Section 49 of the Act speaks to **Landlord's notice: landlord's use of property**, and provides in part, as follows:

49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Based on the landlord's testimony I am satisfied that the landlord intends in good faith to undertake renovations and repairs of the unit which require that the unit be vacant. I also note that the tenant has now almost entirely vacated the unit. I therefore dismiss the tenant's application to cancel the landlord's notice to end tenancy.

Section 51 of the Act addresses **Tenant's compensation: section 49 notice** and provides in part, as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to the above statutory provisions, I find that the tenant is therefore entitled to receive from the landlord the amount of \$650.00, being the equivalent of one month's rent.

For the information of the parties, attention is also drawn to the provisions set out in section 51(2)(a) & (b) of the Act which provides as follows:

51(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

Pursuant to all of the above, I hereby order the landlord to make payment FORTHWITH to the tenant in the full amount of **\$650.00**.

DATE: December 1, 2009

Dispute Resolution Officer