



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, OPL, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* and recovery of the filing fee. The landlord applied for an Order of Possession for landlord's use of property and recovery of the filing fee. Both parties appeared at the hearing and confirmed service of the other party's application upon them. Both parties were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Should the 2 Month Notice to End Tenancy be cancelled or upheld?
2. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings. The tenancy commenced approximately 4 years ago. The tenant is required to pay rent on the first day of the month. On October 29, 2009 the tenant received a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) with an effective date of December 31, 2009. The second page of the Notice did not indicate a reason for ending the tenancy. The tenant has not yet paid rent for December 2009 pending the outcome of this hearing.

Neither party provided a copy of the Notice as evidence for the hearing; however, the landlord acknowledged that the second page of the Notice may not have indicated a reason for ending the tenancy. The landlord submitted that the tenant is aware that the tenancy must end because the landlord has sold the house.

Analysis

As the parties were informed during the hearing, a landlord cannot end a tenancy merely because the landlord has sold the property. Rather, section 49 of the Act provides:

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

[my emphasis added]

The landlord did not indicate that the purchaser has requested in writing that the landlord give notice to the tenant to end the tenancy in order for the purchaser, or a close family member (father, mother, child) of the purchaser to occupy the rental unit.

Further, any Notice to End Tenancy given to a tenant must be completed in accordance with section 52 of the Act. Section 52 of the Act requires the landlord to state the reason for ending the tenancy. Leaving the second page of the Notice blank does not satisfy this requirement.

In light of the above findings, the Notice given to the tenant on October 29, 2009 is invalid and of no force or effect. Therefore, the tenancy continues and the tenant is obligated to pay rent for the month of December 2009. Further, the landlord is not entitled to obtain an Order of Possession and I deny that request.

As the tenant was successful in his application, I award the filing fee to the tenant. The tenant is hereby authorized to make a one-time deduction of \$50.00 from a subsequent month's rent.

As the parties were informed during the hearing, the parties may agree to end the tenancy under terms mutually agreeable to them.

Conclusion

The Notice to End Tenancy was found to be invalid and of no force or effect. The tenancy shall continue and the landlord is not entitled to an Order of Possession. The tenant was awarded the filing fee and is 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: December 18, 2009.

Dispute Resolution Officer