

DECISION

Dispute Codes CNL, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, the landlord and her legal counsel.

Prior to the hearing, the landlord submitted documentary evidence that was received by the Residential Tenancy Branch two days before the hearing. Service of evidence must be completed with 5 clear days for the parties. As this evidence was received within 5 days, I cannot consider the evidence submitted.

At the start of the hearing I had the tenant clarify why she had applied for "O" – other. The tenant indicated that she was only applying to dispute the notice to end tenancy. Her application was amended to exclude "other".

Issues(s) to be Decided

The issue to be decided is whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to sections 49 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on August 1, 2009 for a monthly rent of \$1,500.00 due on the 1st of the month and a security deposit of \$750.00 was paid. The parties dispute whether the tenancy was a month to month or a fixed term tenancy.

The tenant submitted the following documents into evidence:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 28, 2010 with an effective date of March 30, 2010, citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- A copy of the tenant's visa bill from September 1, 2009;
- A letter from the landlord to the tenants dated August 7, 2009 providing direction to the tenants for rent payment and advising the tenants can no longer use the deck;
- An undated letter from the tenant to the landlord responding to the restriction of the deck and requesting a face to face meeting with the landlord and a written tenancy agreement;

- An undated letter from the tenant to the landlord and her agent advising the landlord of the tenants' intent to use the back deck and that they considered it to be an integral part of their lease;
- A photograph of the deck; and
- A copy of receipts for key cutting and deck furniture.

The landlord testified that she will be moving in to the rental unit and therefore issued the two month notice to end the tenancy.

The tenant testified that she felt the landlord was issuing the notice in bad faith, that she has no intention of moving in to the rental unit. The tenant contends that they were not provided with a tenancy agreement, even after specifically requesting one; that they were not given keys or a clean rental unit when they moved in; that the landlord refused to allow them to use the deck that was promised when they looked at the unit; they were promised a storage locker and to date have not received one.

The tenant testified that they would not have moved in had they thought it was only a month to month tenancy. She further testified that it was her roommate that actually viewed the rental unit prior to entering into the verbal tenancy agreement. She stated that they had planned to meet with the landlord's agent to go through everything after they moved in.

The landlord testified that they never had an intention of a fixed term tenancy. She further testified that they had tried to get the tenants to sign a tenancy agreement and they refused because of a fridge issue.

Analysis

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

Section 49 of the *Act* allows a landlord to end a tenancy on a date that is not earlier than 2 months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if she, in good faith, plans to move into the rental unit or in the case of a family corporation if a person owning voting shares in the corporation plans to move into the unit.

While the tenant contends that the relationship between the parties has not been good since they have moved in, she has not provided any evidence supporting her claim that the landlord does not intend, in good faith, to move into the rental unit.

As the tenant has failed to provide any evidence to support her claim that the tenancy is a fixed term tenancy; and as the landlord contends the tenancy was on a month to month basis; and in the absence of a written tenancy agreement I find that the tenancy is a month to month tenancy.

While not part of this decision, I remind the tenant that she is entitled to compensation from the landlord in the amount of the equivalent of one month's rent (\$1,500.00) resulting from the landlord's notice, pursuant to Section 51 of the *Act*. I also remind the tenant that should the rental unit not be used for its stated purpose for at least 6 months within a reasonable period of time, she is at liberty to apply for dispute resolution for compensation under Section 51, in the amount of double the monthly rent.

Conclusion

For the reasons noted above, I dismiss the tenant's application in its entirety, without leave to reapply and find the landlord's notice to end tenancy for landlord's use of the property to be effective and I amend the effective date to March 31, 2010, pursuant to Section 53 of the *Act*.

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: March 25, 2010.

Dispute Resolution Officer