



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, OLC

Introduction

This Hearing was convened for the Tenant's application to cancel a Notice to End Tenancy for Landlord's Use (the Notice") issued June 29, 2010, and for an order that the Landlord comply with the Residential Tenancy Act (the "Act").

The parties gave affirmed testimony.

Preliminary Matters

At the outset of the Hearing, it became apparent that the Tenant was not seeking to cancel the Notice. She is prepared to move out of the rental unit for the reason stated on the Notice, but wanted to dispute the effective date of the Notice. The Tenant testified that she received the Notice on June 30, 2010, and therefore she did not receive the Notice in time for the tenancy to end on September 1, 2010, as stated on the Notice.

Section 53 of the Act states:

Incorrect effective dates automatically changed

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

A Notice issued under Section 49 of the Act (for Landlord's Use) is effective:

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

The parties testified that rent is due on the first of each month and that the tenancy agreement is not a fixed term tenancy. The Landlord testified that she intended to give the Tenant 2 months notice to end the tenancy. Therefore the Notice is deemed to be effective on September 30, 2010, pursuant to the provisions of Section 53 of the Act.

As the Tenant is not disputing the Notice, her application is dismissed.

Conclusion

The Tenant's application is dismissed.

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: September 02, 2010.
