



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL
 OPL, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlords' Use of Property dated September 23, 2010. The Landlord applied for an Order of Possession and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on April 1, 1999. On September 23, 2010, the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlords' Use of Property dated September 23, 2010 by posting it to the rental unit door. The ground stated on the Notice was that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse."

The Landlord's agent (who is the Landlord's daughter) claimed that she intended to reside in the rental unit in order to assist her mother (whose health is failing) with various responsibilities. The Tenant and his advocate argued that this was not the Landlord's primary motive for ending the tenancy and claimed instead that the Landlord was seeking to end the tenancy because the Tenant had for example, filed a complaint with the Human Rights Tribunal in 2009 and with the Residential Tenancy Branch on September 14, 2010.

At the conclusion of the evidence which occupied 75 minutes of the hearing, the Tenant's advocate asked for a moment to speak to the Tenant and then a few minutes later made an offer to the Landlord's agent to settle this matter. In particular, the Tenant's advocate said that the Tenant agreed to end the tenancy (ie. to withdraw his application to cancel the 2 month Notice) if the Landlord agreed to extend the effective date of the Notice to January 31, 2011. The Tenant also confirmed that he was making this offer and the Landlord's agent then accepted it. A few minutes later, however the Tenant claimed that he had changed his mind and did not wish to move out.



Dispute Resolution Services

Page: 2

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Analysis

Section 63 of the Act says as follows:

- (1) The director may assist the parties, or offer the parties an opportunity to settle their dispute.
- (2) If the parties settle their dispute during dispute resolution proceedings, the directory may record the settlement in the form of a decision or order.

I find that the Tenant had an opportunity to hear all of the evidence and to discuss the merits of the dispute with his advocate prior to making an offer to the Landlord to settle this dispute. I find that the Tenant did make an unconditional offer to the Landlord to settle this dispute and that it was therefore not open to the Tenant to change his mind or revoke that offer once it was accepted by the Landlord's agent. Consequently, I find that the Parties agreed at the hearing to settle this dispute on the following terms:

1. The Tenant agrees to withdraw his application to cancel the 2 Month Notice to End Tenancy for Landlords' Use of Property dated September 23, 2010;
2. The Landlord agrees to extend the effective date of the 2 Month Notice to End Tenancy for Landlords' Use of Property dated September 23, 2010 to January 31, 2011; and
3. The Tenant will be entitled to his last month's rent free or compensation equivalent to one month's rent if he leaves earlier pursuant to s. 51 of the Act.

As the tenancy will be ending by the agreement of the Parties, the Landlord's application for an Order of Possession is dismissed with leave to reapply. For the same reasons, I find that it would not be appropriate to award reimbursement of the filing fee and that part of the Landlord's application is dismissed without leave to reapply.

Conclusion

The Tenant's application is withdrawn. The Landlord's application for an Order of Possession is dismissed with leave to reapply. The Landlord's application to recover the filing fee is dismissed without leave to reapply. The tenancy will end on the above-noted terms. 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: November 09, 2010.

Dispute Resolution Officer