



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to allow the Tenants more time to make an application to cancel a Notice to End Tenancy for cause and to obtain an Order to cancel a Notice to End Tenancy issued for Cause.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*. The Tenants served the Landlord's wife, in person at the Landlord's residence, on approximately November 26, 2010. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Does the Notice to end tenancy meet the form and content requirements of the *Residential Tenancy Act*?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective September 1, 2010 which was set to expire on November 30, 2010. Rent is payable on the first of each month in the amount of \$910.00. The Tenants have not paid the Landlord a security deposit since entering into this tenancy agreement at the end of September 2010. Tenant (1) has occupied this rental unit for approximately 3 ½ years when he moved in with an existing tenant who had paid the Landlord a

security deposit at the beginning of their tenancy. That tenant has since moved out of the rental unit.

The Tenants confirmed they received a 10 Day Notice to End Tenancy on November 2, 2010 and that they paid their rent that same day. They stated that the Landlord is not clear on how rent is to be paid so when the Landlord approached them and served the 10 Day Notice they gave him the rent later that day.

The Landlord testified and confirmed he issued the 10 Day Notice to End Tenancy November 2, 2010, and the Tenants paid him the November rent in full later that day. The Landlord stated that he is of the opinion that the Tenants were required to move out of the rental unit November 30, 2010 so in October 2010 he wrote the Tenants a letter informing them they had 30 days to move out of the unit. The Landlord confirmed that he has not issued the Tenants a 1 Month Notice to End Tenancy for Cause on the proper form.

The parties requested clarification on the terms of their tenancy agreement.

Analysis

The evidence supports a 10 Day Notice to End Tenancy was served personally to the Tenants on November 2, 2010, and the rent was paid in full later that same day. Therefore the 10 Day Notice to End Tenancy becomes void as the Tenants paid their rent in full within the five day limitation period.

The Landlord did not issue a 1 Month Notice to End Tenancy to the Tenants; therefore their application to cancel a 1 Month Notice is moot, as is their request for more time to cancel the Notice.

After careful review of the evidence and testimony I find the parties entered into a fixed term tenancy agreement effective September 1, 2010 which was set to expire November 30, 2010. Section 6 of the Act provides that a term in a tenancy agreement

is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. The tenancy agreement states “the tenancy will end NOVEMBER 30 / 2010”. In the absence of the required statement that the tenancy will end and the parties must vacate the unit, I find this tenancy agreement continues on a month to month tenancy after November 30, 2010.

I have included with my decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

Having found the Tenant's application to be moot, no further action is required and the file is hereby closed.

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 17, 2010.

Dispute Resolution Officer