

DECISION

Dispute Codes: CNL and FF

Introduction

This application was brought by the tenant seeking to have set aside a two-month Notice to End Tenancy for landlord use served by posting on the tenant's door on February 28, 2011 and setting an end of tenancy date of April 30, 2011.

As a preliminary matter, the Notice to End Tenancy for landlord use must set an end of tenancy date that is two months after the next rent due date following service. As the Notice was posted on February 28, 2011, and as notices served by posting are deemed to have been received three days later, the date of service is March 3, 2011. Therefore, the effective date of the notice is automatically corrected to May 31, 2011 under section 53(2) of the *Act*.

Issue(s) to be Decided

This matter requires a decision on whether the Notice to End Tenancy was served, in good faith to enable the landlord to move in to the rental unit and whether the notice is upheld or set aside accordingly.

Background and Evidence

The tenancy began on or about February 2, 2008. Rent is \$700 per month and the landlord holds a security deposit of \$362.50 paid at the beginning of the tenancy.

During the hearing, the tenant stated that his was the most stable tenancy in the rental building and that he believed there were other units in the building that would have served the landlord's needs.

The landlord stated that he needed the rental unit to house him and his wife and that it was the only two bedroom unit in the building.

The parties are aware of the tenant's right to the equivalent of one month's rent provided under section 51 of the *Act*, and of the tenant's right to leave on 10 day's notice if he were to find suitable accommodation sooner.

Analysis

The *Act* provides mechanisms for both a landlord and a tenant to end the tenancy, absent serious cause or unpaid rent. Where the tenant is normally required to give only one month's notice, the *Act* requires the landlord to give double the one month's notice when it is given for landlord use.

In addition, the landlord must give one free month's rent, and take possession on penalty of an additional two months rent if the landlord does not use the unit for the stated and approved purpose. Clearly, the legislation works to ensure that Notice for landlord use is not taken lightly.

In evaluating a Notice to End for landlord use, policy guideline 2-2 advises that such notice must be given in faith and that:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

In considering the present matter, I find no reason to question the good faith of the landlord in issuing the Notice to End Tenancy, and I can find no cause to set aside the Notice.

Conclusion

The Notice to End Tenancy is upheld with the end of tenancy date corrected to May 31, 2011, at which time the tenancy is ended.

March 15, 2011