



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MT

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy.

Background and Evidence

On December 20, 2010 the tenant was served with a one month Notice to End Tenancy for cause with an end of tenancy date of January 31, 2011.

The applicant testified that:

- The Notice to End Tenancy that was served on him did not have the second page as required.
- The landlord has also collected rent for February 2011 and March 2011.

The applicant therefore believes that the landlord should no longer be able to enforce the Notice to End Tenancy, as it was not complete, and they have collected rent past the end of tenancy date.

The respondent testified that:

- He disputes the tenants claim that both pages were not served, as both pages were served on the tenant stapled together.
- They had a verbally agreed to allow the tenant to stay to the end of February 2011 however the tenant agreed that he would move out at the end of February 2011.
- Because of this agreement they have collected February 2011 rent, and since the tenant has not vacated they have also accepted March 2011 rent.

The respondent therefore believes that the Notice to End Tenancy should still be enforced because the extension was supposed to of been for only one month.

In response to the respondent's testimony the applicant testified that:

- He never agreed to move out at the end of February 2011.

Analysis

The Notice to End Tenancy given by the landlords on December 20, 2010 ended this tenancy on January 31, 2011; however by accepting rent for February 2011, the landlord has re-establish the tenancy and can no longer rely on the December 20, 2010 Notice to End Tenancy to end this tenancy.

The landlord claims that they verbally agreed to allow the tenant to stay to the end of February 2011, and the tenant verbally agreed to vacate at the end of February 2011, however the tenant denies that there was any such agreement, and since there was nothing in writing the landlord has not met the burden of proving that the tenant was to vacate at the end of February 2011.

The burden of proving a claim lies with the person making the claim and when it is just that person's word against that of the other that burden of proof is not met.

Conclusion

This tenancy has been re-established and therefore the tenancy continues. The Notice to End Tenancy dated December 20, 2010 is no longer enforceable.

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 22, 2011.

Residential Tenancy Branch