



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, OLC, PSF, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of the Property, for the Landlord to comply with the Act, for the Landlord to provide service and facilities, to give the Tenant a rent reduction and to recover the filing fee for this proceeding.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail on March 12, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

During the Hearing the Dispute Resolution Officer informed the Tenant and the Landlord that the Tenants' application to dispute the Notice to End Tenancy for a Landlord's use of the Property is the focus of the hearing. The Tenant's application for the Landlord to comply with the Act, for the Landlord to provide services and facilities and for the tenant to have a rent reduce are considered unrelated disputes to the request to cancel the Notice to End Tenancy. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) says a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenants' application for the Landlord to comply with the Act, for the Landlord to provide services and facilities and for the Tenant to have a rent reduction are dismissed with leave to reapply.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on August 14, 2010 as a fixed term tenancy with an expiry date of August 31, 2011. Rent is \$1,500.00 per month payable in advance of the 31st day or end of the month of each month. The Tenant paid a security deposit of \$750.00 and a pet deposit of \$500.00 on August 14, 2010.

The Landlord said he served the Tenants with a 2 month Notice to End Tenancy for the Landlord's use of the Property dated February 23, 2011. The effective vacancy date on the Notice is April 3, 2011. It was noted that the effective vacancy date of April 3, 2011 is incorrect and pursuant to section 53 of the Act (incorrect effective vacancy date change automatically) the effective vacancy date is changed to May 1, 2011. The Landlord said she issued the Notice to End Tenancy as she has no place to live and she wants to move back into her home. She said she is living at a shelter at the present time. The Landlord said the Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Tenant said her English is not good so she said she had an interpreter to help her for the Hearing. The Tenant said through her interpreter that she has a fixed term tenancy and that a fixed term tenancy cannot be ended with a 2 Month Notice to End Tenancy for the Landlord's Use of the Property. She continued to say through her interpreter that she had many other issues with the Landlord, but she understood that they were unrelated issues and she could make another application to deal with those concerns.

Analysis

Policy guideline #30 in the Residential Tenancy Policy Guidelines says a landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term.

As the Landlord gave a Notice to End Tenancy to the Tenant for the Landlord's use of the property, I find the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated February 23, 2011 is invalid and I grant the Tenant's application to cancel the Notice to End Tenancy dated February, 23, 2011 and I Order the Tenancy to continue as in the tenancy agreement.

As the Tenant has been successful in this matter I Order that the Tenants recover the \$50.00 filing fee by reducing the March 31, 2011 rent payment by the filing fee amount of \$50.00. Therefore the Tenant will pay rent of \$1,450.00 for March 31, 2011.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is granted.

I Order the tenancy to continue as written in the tenancy agreement dated and signed August 14, 2010.

Dispute Resolution Officer