



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

CNC

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

Did the landlord issue a valid Notice to End Tenancy? If so, should the Notice be upheld or cancelled?

Background and Evidence

The applicant provided a copy of a one page tenancy agreement for this proceeding. The landlord did not provide a copy of a tenancy agreement prior to this hearing. The tenancy agreement provided by the applicant indicates the applicant's husband and the landlord entered into a tenancy agreement on September 16, 2009 for a tenancy set to commence on October 1, 2009. The tenancy agreement indicates that at the end of the fixed term of March 31, 2010 the tenancy converts to a month-to-month tenancy. The applicant's husband is the only tenant named on the tenancy agreement and is the only tenant signatory to the tenancy agreement.

On March 1, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) to the applicant and posted it to the door of the rental unit. The landlord also issued a letter to the applicant on March 1, 2011 and placed it in the mailbox for the rental unit. The applicant received these documents and filed this application for dispute.

The applicant stated that the tenancy agreement entered into by her husband is still valid. The landlord confirmed that they had not received a tenant's notice to end

tenancy and that a new tenancy agreement has not been entered into since September 16, 2009; however, the landlord submitted that the applicant's husband has not been seen at the property for quite some time. The applicant stated that her husband works out of town.

Provided as documentary evidence for this hearing was a copy of the Notice to End Tenancy, the tenancy agreement provided by the applicant, and written submissions from the applicant.

I had also heard verbal testimony from two of the landlord's witnesses with respect to dogs being kept in the rental unit, dogs using the common property, as well as the applicant's conduct towards the landlord.

Analysis

Upon review of the tenancy agreement provided to me, I find that there is only one tenant named in this tenancy agreement and the tenant is the applicant's husband. I do not find sufficient evidence that the applicant is a tenant under the tenancy agreement.

A person who is not a tenant under a tenancy agreement but occupies a rental unit is called an occupant. An occupant is also "a person permitted on the property by the tenant". The Act provides that a tenancy may end where a tenant or "a person permitted on the property by the tenant" has, among other reasons,

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; and
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Where a landlord seeks to end a tenancy the landlord must serve a Notice to End Tenancy in the approved form. The approved form requires that the landlord identify the tenant. I find that naming an occupant and not the tenant on a Notice to End Tenancy does not meet the requirements of the Act. Since the landlord issued a Notice to End Tenancy to an occupant and not a tenant I find the Notice before me to be invalid and ineffective. As a result, this tenancy continues until such time it ends under the Act.

As I have found the Notice to End Tenancy invalid because it did not properly identify the tenant I did not find it necessary to further consider the reasons for issuing the Notice.

Conclusion

The landlord has not issued a proper Notice to End Tenancy to the tenant and the tenancy shall continue until such time it ends under the Act.

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: April 06, 2011.

Residential Tenancy Branch