

Decision

Dispute Codes: CNL, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a purported Two-Month Notice to End Tenancy for Landlord's Use dated February 3, 2011 purporting to be effective March 31, 2011. The tenant was also seeking an order that the landlord comply with the Act.

Both the landlord and the tenant appeared and gave testimony in turn.

Issue(s) to be Decided

The tenant was seeking to cancel the Two-Month Notice for Landlord's Use. Therefore the issue to be determined based on the testimony and the evidence is:

- Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances?
- Is an order compelling the landlord to comply with the Act warranted?

Background and Evidence

The parties testified that the tenancy began in September 2010 with current rent of \$1,200.00.

The tenant submitted into evidence a copy of the Notice to End Tenancy. Instead of issuing the Two Month Notice to End Tenancy for Landlord's Use on the required form, the landlord had apparently served the tenant with One Month Notice to End Tenancy for Cause for Landlord Use and on page 2 of the form had merely written in the comment, "*my children move this house*". (reproduced as written)

According to the landlord, this notice was meant to end the tenancy so that the landlord's close family member could then move in.

The tenant testified that the landlord had served several letters and threats advising the tenant that he must move out or he will be removed. Copies of this correspondence were in evidence. The tenant testified that the landlord had interfered with his quiet

enjoyment of the suite and this was why the tenant was seeking an order that the landlord be forced to comply with the Act and stop the harassing conduct.

The landlord acknowledged that the letters were sent and admitted that he was not familiar with the Act. The landlord denied harassing the tenant and pointed out that the tenant was actually being bothered by other residents in the neighbourhood who apparently objected to some of the activities of the tenant and his guests with respect to the rental property.

Analysis

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Act defines, "close family member" as an person, who is

- (a) the individual's father, mother, spouse or child, or
- (b) the father, mother or child of that individual's spouse;

Section 49 of the Act states that the notice to end the tenancy can only be effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

In this instance the landlord was purporting to end the tenancy because his son was moving into the rental unit. However, the landlord had not issued the Notice on the proper form.

Section 52 of the Act speaks to the form and content of a notice to end tenancy and states that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.** (my emphasis)

In this instance, I find that the Two-Month Notice issued by the landlord was not in compliance with the Act.

Accordingly, I find that the Two-Month Notice to End Tenancy dated February 3, 2011 cannot be enforced as it is defective and does not comply with section 52 of the Act.

With respect to the allegations of harassment, I find that Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the landlord was in contravention of the Act by attempting to force the tenant to vacate without due process under the law. However, the landlord is now aware that he is required to know the Act and the rights and obligations of landlords and tenants under the legislation. The landlord is instructed to find out the necessary information that would enable the landlord to adhere to the Act and Regulations.

Should the landlord contravene the Act in any respect, the tenant is at liberty to make an application for an order to comply and/or a monetary order for compensation.

Conclusion

Based on the testimony and evidence presented during these proceedings, I order that the Notice to End Tenancy purportedly for Landlord Use dated February 3, 2011, is hereby cancelled and of no force nor effect.

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 2011.

Residential Tenancy Branch