



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF, O

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 20, 2011, for an Order that the Landlord comply with the Act and to recover the filing fee for this proceeding.

The Tenant's application included the names of 2 parties as tenants, however only one of those parties (A.D.) signed the tenancy agreement. As a result, I find that the other person named as a tenant, (S.S.) is not properly named as a party in these proceedings and the style of cause is amended by removing her.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on February 1, 2011 and expires on January 31, 2012. On the expiry of the fixed term, the Parties agreed that the tenancy may continue on a month-to-month or another fixed length of time. Rent is \$1,275.00 per month payable in advance on the 1st day of each month.

On or about April 24, 2011, an agent of the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 20, 2011. The ground stated on the Notice was that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) or the landlord or the landlord's spouse." The effective date written on the Notice is June 30, 2011. The Tenant said he believes the owners intend in good faith to move into the rental unit but he does not want to end the tenancy until the end of the fixed term.

The owners of the rental property said there are urgent circumstances that make it necessary for them to move back into the rental unit and they claim the Tenant told them that he would move out if he received 2 months notice (which the Tenant denied).

Analysis

Section 49(2)(c) of the Act says that a Landlord may end a fixed term tenancy by giving a tenant a 2 Month Notice however, the effective date of that Notice cannot be any earlier than the date set out in the tenancy agreement as the last day of the fixed term.

As the Tenant is not disputing the grounds of the Notice, his application to cancel it is dismissed without leave to reapply. Pursuant to s. 53(2) of the Act, ***the effective date of the 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 20, 2011 is automatically amended to January 31, 2012*** which is the last day of the fixed term under the Parties' tenancy agreement.

Consequently, unless the tenancy ends earlier for another reason (set out under s. 44 of the Act), the tenancy will end pursuant to the 2 Month Notice to End Tenancy on January 31, 2012 (unless the Tenant elects to end it earlier) and the Tenant will be entitled to the compensation set out under sections 50 and 51 of the Act.

Conclusion

The Tenant's application for an Order that the Landlord comply with (s. 49(2)(c)) the Act is granted. The Tenant's application to cancel the 2 Month Notice is dismissed without leave to reapply and the Notice will remain in force and effective although the effective date is amended.

As the Tenant has been partly successful on his application, I find that he is entitled pursuant to s. 72(1) of the Act to recover ½ of the \$50.00 filing fee he paid for this proceeding or \$25.00. I further order that the Tenant may deduct this amount (\$25.00) from his next rent payment when it is due and payable to the Landlord.

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: June 02, 2011.

Residential Tenancy Branch