



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for the landlord's use of the rental property and to recover the filing fee from the landlord for the cost of this application.

The tenant attended the conference call hearing, gave affirmed testimony and provided an evidence package in advance of the hearing. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents, along with the evidence package, by registered mail on April 7, 2011, the landlord did not attend. The tenant also testified that she personally delivered a copy of the Tenant's Application for Dispute Resolution, notice of hearing and evidence to an employee of the landlord's property manager's office on April 7, 2011.

All evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for the landlord's use of the rental property?

Background and Evidence

The tenant testified that this month-to-month tenancy began around mid-October in 2008. Rent in the amount of \$350.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears.

The tenant further testified that the property has been for sale since July, 2010. The real estate agent told her within the last 10 days that there has been an interest shown by a perspective purchaser and he is expecting an offer. He told the tenant he would

notify her when an offer was made, and the tenant has not heard that an offer has been made, and has confirmed that the For Sale sign still stands on the property.

The tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on or about March 25, 2011, a copy of which was provided in advance of the hearing. That notice contains an expected date of vacancy of May 31, 2011 and states that: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The notice states nothing about a sale of the property.

The tenant further testified that this is the third hearing held on a notice to end the tenancy for landlord's use of the property, and provided copies of 2 previous Decisions of Dispute Resolution Officers with the Residential Tenancy Branch. She stated that for the first hearing, the landlord was represented by an agent from the landlord's property management office. The Dispute Resolution Officer cancelled that notice because the notice to end the tenancy did not contain a reason for ending the tenancy. No one attended the second hearing on behalf of the landlord, and the tenant testified that the notice issued that was the subject of that hearing stated that the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse intended to occupy the rental unit. She further stated that the landlord provided information for that hearing that he has family from another province that visited about 6 times per year and the landlord wanted to use the rental unit for their purposes, however, the tenant also testified that the landlord resides in Ontario, and has not had family visiting annually and certainly not 6 times per year.

The tenant further testified that the landlord sent her an email dated October 5, 2010 wherein he advised that the rent would be increased to \$750.00 effective November 1, 2010, more than double the amount that she currently pays, and would be increased again effective February 1, 2011 to \$765.00 per month. The tenant's lawyer sent a letter to the landlord explaining the legalities of raising rent in the Province of British Columbia. A copy of the email and the lawyer's letter were also provided in advance of the hearing. The tenant feels that the landlord wants her to move out so that he can raise the rent for another tenant.

The tenant requests an order cancelling the notice to end the tenancy and an order permitting her to reduce a future rent payment by \$50.00 to recover the cost of this application, and an order that the landlord comply with the *Act* by not issuing notices to end tenancy for landlord's use of the property requiring her to prepare for and attend hearings. She further testified that the landlord, the property manager, or the property manager's employee who attended the second hearing have all failed to attend the last hearing and today's hearing.

Analysis

In the circumstances, I find that the landlord has issued notices to end the tenancy that are not in compliance with the *Residential Tenancy Act*. I further find that the landlord has failed to attend today's hearing, and as a result has failed to establish that he or any family member intend in good faith to occupy the rental unit, and therefore, the notice to end tenancy must be cancelled. The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

I further find that the landlord has issued the notices to end tenancy on more than one occasion without any basis, and the tenant has been required to apply for, prepare for and attend hearings that the landlord has failed to attend. The landlord may only issue a notice to end the tenancy for the reasons set out in the *Residential Tenancy Act* and must be able to establish the validity of those reasons.

Conclusion

For the reasons set out above, the notice to end the tenancy dated March 25, 2011 is hereby cancelled.

I further order that the tenant be permitted to deduct the amount of \$50.00 from the next month's rent payable for the cost of this application.

I further order that the landlord comply with the *Residential Tenancy Act*. The landlord may only issue a notice to end the tenancy that can be validly established at dispute resolution. If the landlord issues another notice to end the tenancy for any reason and cannot or fails to establish the validity of the reasons for issuing the said notice, the tenant will be at liberty to apply for a monetary order as against the landlord for her loss of quiet enjoyment of the rental unit. I further direct that if the landlord serves another notice to end the tenancy, the tenant will be at liberty at that time to apply for a monetary order as against the landlord along with the application by the tenant to cancel the notice to end the tenancy.

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: May 03, 2011.

Residential Tenancy Branch