



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use of property. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

Matters related to this tenancy were heard April 20, 2011 under file 769647. This hearing was an application by the tenant to cancel a notice to end tenancy for landlord's use of property and in this hearing the notice was set aside by the Dispute Resolution Officer as the landlord did not meet the burden of proof to have the notice upheld.

On May 31, 2011 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property: the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. This notice has an effective end date of August 1, 2011.

At the start of the hearing service and receipt of the notice was discussed as the notice was sent registered mail which automatically adds 5 days for service. The tenant stated that she did not remember for sure if she received the notice on May 31 or June 1, 2011. The landlord did not have the registered mail receipt at hand to verify the date of delivery.

The landlord testified that he has hired a caretaker to manage this and another property that the landlord currently owns and that the caretaker has been introduced to tenants at the landlord's other property as the caretaker for the landlord.

The tenant testified that she did not believe the caretaker's agreement to be any different from her tenancy agreement as they both state responsibility for maintaining the property, mowing, snow removal, taking out the garbage etc. The tenant did acknowledge that her tenancy agreement does not include duties such as collecting rent and security deposits or representing the landlord in legal proceedings related to the tenancies.

The tenant questioned why the landlord took a year's worth of rent cheques from her in February if he didn't want her to stay in the tenancy however the landlord declined to comment on his course of action.

The tenant in this application is seeking to have the landlord's notice to end tenancy set aside.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds to have the notice to end tenancy for landlord's use of property upheld.

The landlord has provided evidence that reflects that the caretaker will have specific duties related to the operation of the rental property and these duties include in part:

- Representing the landlord in legal proceedings related to the tenancy.
- Overseeing rent payment and security deposits paid by tenants.
- Advertising and showing the property to prospective tenants.
- Ensure building maintenance is completed.
- Be available for the tenants in case of emergency.
- Develop and maintain a working budget for the property.

However as the notice is dated May 31, 2011, was sent by registered mail and the tenant not certain when she received the notice, the end of tenancy date on the notice will self correct to August 31, 2011. The landlord is aware that the tenant is entitled to 1 month's compensation and stated in the hearing that the tenant will not pay the August 2011 rent as compensation.

The tenant's application is hereby dismissed in its entirety without leave to reapply with the resulting effect that the tenancy will end on August 31, 2011 at 1:00 PM.

Conclusion

The tenant's application is hereby dismissed without leave to reapply with the resulting effect that the tenancy will end on August 31, 2011 at 1:00 PM.

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 27, 2011.

Residential Tenancy Branch