



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a two month Notice to End Tenancy issued to the Tenant for the Landlord's use of the rental unit and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that throughout the hearing the Advocate for the Tenant had to be cautioned for interruptive behavior.

Issue(s) to be Decided

Should the two month Notice to End Tenancy be cancelled?

Background and Evidence

The rental unit is a basement suite in the residential home of the Landlord. The Landlord lives upstairs with his daughter. He testified he is a single parent.

In April of 2011, the Landlord attached a letter to the door of the rental unit explaining he wanted to end the tenancy so that his daughter could use the bedroom in the basement suite, among other reasons. The Landlord testified during the hearing that his sister also intends to move in with his daughter and they all intend to occupy the residential home.

According to the testimony of the Landlord, the Tenant wrote a note on the back of this letter that it was not the right way to end the tenancy and returned it to him. The

Landlord then printed off a form provided by the Residential Tenancy Branch, which the Landlord would use to give the Tenant a two month notice to end tenancy. The Landlord testified that he filled out this form and attached it to the door of the rental unit around the middle of May 2011. He had a witness sign a statement to this effect, however, I note there is no date mentioned in the witness statement of when the posting of the notice to the door happened.

The Landlord testified that there are many other reasons he could have ended the tenancy due to the alleged behaviour of the Tenant. He testified that the main reason though is that his daughter is a teenager and needs her own space, and his sister will move in with them and help out with the needs of his teenage daughter.

He further testified that when the Tenant told him she did not get the notice posted to the door he gave her a third notice in person.

The Advocate for the Tenant explained that the Tenant did not receive the actual two month Notice to End Tenancy until June 2, 2011. The Advocate for the Tenant testified that she was present on June 2, 2011, and heard the conversation that the Tenant got the Notice on June 2, 2011. The Tenant alleges this is the date she received the Notice.

The Advocate for the Tenant testified that the Tenant was not disputing the June 2, 2011, Notice to End for the daughter to move into the basement suite, as she believes he will do and is aware the Landlord has a right to do this. The Advocate explained that the Tenant was upset because originally she received a letter from the Landlord and this was not a legal form or notice to end the tenancy. The Tenant denies getting any notice posted on the door. The Tenant is also upset that when the correct form for the Notice was given, the dates were wrong on it. The Tenant alleged that the Landlord was upset with her because she did not pick up the Landlord's daughter when she was supposed to.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find that the Notice to End Tenancy has been given for a valid reason. Although the dates in it are incorrect, these automatically correct under the Act.

I find the Tenant has insufficient evidence to prove the Notice should be cancelled and therefore, I dismiss her Application without leave to reapply. I find the Tenant has insufficient evidence that the Landlord is ending the tenancy in bad faith. The Tenant

agrees that the Landlord has a good faith intention to have his daughter move into the rental unit.

I note the letter given by the Landlord was not effective to end the tenancy in accordance with the Act, and that I am unable to verify service of the first form used.

The Landlord alleges the first form was posted to the door and was witnessed, although there is no mention of the date this was posted in the statement of the witness. Therefore, I am unable to determine when this first form was posted to the door.

Nevertheless, based on the evidence and testimony, I am satisfied find that the two month Notice to End Tenancy was served on the Tenant on June 2, 2011. The effective date of this Notice is set out as July 1, 2011. Due to the service date being in June though, the effective date must change to reflect the two month notice required.

Under section 53 of the Act, incorrect effective dates automatically change to the earliest date that complies with the Act.

Therefore, the two month Notice to End tenancy will take effect at **1:00 p.m. August 31, 2011**. At the end of the hearing, the Landlord orally requested an order of possession and under section 55 of the Act, I must grant that request and I issue an order of possession **effective at 1:00 p.m. August 31, 2011**.

As the Tenant was unsuccessful in having the Notice cancelled, I do not award her the recovery of her filing fee for the Application.

Pursuant to section 77 of the Act, this decision and order are final and binding on the parties, except as otherwise provided in the Act. The decision and order are 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