



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNLC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy that has been given for landlord use. The applicants are also requesting recovery of the \$50.00 filing fee.

Background and Evidence

The applicants testified that:

- They signed a fixed term tenancy agreement with an expiry date of April 31, 2012.
- On June 6, 2011 the landlord served them with a two month Notice to End Tenancy stating that the property had sold and that the purchaser intended to occupy the rental unit.

- They knew that the property was for sale however they had never agreed to vacate the rental unit early if the property sold, and just assumed that if it did sell they would stay and the purchasers would become their new landlords.

The applicants are therefore requesting that the Notice to End Tenancy be cancelled and that they be allowed to remain in the rental unit until the end of their fixed term tenancy agreement.

The respondent testified that:

- The tenants were fully aware that the rental unit was for sale and had been for some time.
- The tenants verbally agreed to move out of the rental unit with two months notice if the rental unit sold.
- The rental unit has sold and the purchasers want to occupy the rental unit and therefore she needs vacant possession to allow purchaser to move in.
- She therefore gave the tenants a two month Notice to End Tenancy, and at first they made no objection, which to her confirms that they were aware of the verbal agreement to vacate on two months notice.
- She later received an e-mail from the tenants asking for \$8,000.00 to move, in a sense blackmailing her.
- In an e-mail that she sent on May 22, 2011 she had even reiterated that they would have two months to move if the rental unit sold. The tenants confirmed receiving the e-mail and made no dispute of the agreement for two months notice at that time. Therefore they obviously knew there was an agreement to move on two months notice.
- She has supplied letters from two previous tenants who both confirm that they were aware that the unit was for sale and that they may have to vacate the rental unit if it sold, even though they too had fixed term tenancies.

The respondent/landlord therefore requests that the Notice to End Tenancy be upheld, and that the request to have the notice cancelled be dismissed.

In response to the respondent/landlords testimony the applicants testified that:

- They reiterate that they never agreed either verbally or in writing to vacate the rental unit on 2 months' notice if the unit sold.
- This move was a very big move for them, and they certainly would not have agreed to move into the rental unit if they knew they may have to move on short notice.
- The whole reason they signed a fixed term tenancy was to give themselves the security of knowing they would not have to move out of the rental unit until at least the end of the fixed term.

Analysis

It is my decision that the landlord is bound by the fixed term tenancy agreement she signed with the applicants.

The landlord claims that there was a verbal agreement to end the tenancy on two months notice, if the rental unit sold, however it is my decision that she has not met the burden of proving that claim, as it is basically just her word against that of the tenants. The burden of proving a claim lies with the person making the claim and when it is just that persons word against that of the other that burden of proof is not met.

The landlord has supplied letters from previous tenants who stated they were aware that they may have to leave if the rental unit sold, however that does not prove that there was also an agreement with these tenants.

Further just because the tenants confirmed receipt of an e-mail that states that they will be given two months Notice to End Tenancy if the rental unit sells, does not mean they agreed to vacate with two months notice.

Conclusion

I will not set the Notice to End Tenancy aside; however it is my decision that the effective end of tenancy a date is corrected to April 31, 2012, and the tenants must vacate on that date.

I further order the landlord bear the \$50.00 cost of the filing fee that the tenants paid for their application for dispute resolution. The tenants may therefore make a one-time deduction of \$50.00 from future rent 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: July 11, 2011.

Residential Tenancy Branch