



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use of the rental property. The tenant and an agent for the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

On April 26, 2011 the landlord served the tenant with a Notice to End Tenancy for Landlord's Use of Property. The reason indicated on the notice for ending the tenancy was that the landlord intended to convert the residential property for use by a caretaker. The tenant applied to cancel the notice, and on May 31, 2011 a hearing was convened to deal with the tenant's application. The tenant and an agent for the tenant, DB, participated in that hearing, gave affirmed testimony, and were provided the opportunity to present their written and oral evidence, as well as cross-examine the other party and make submissions. The decision on that application was issued on June 8, 2011. The Dispute Resolution Officer determined that the landlord had failed to provide sufficient evidence to establish that they had issued the notice to end tenancy in good faith, and he cancelled the notice. The decision does not indicate that the landlord requested an adjournment to submit more evidence. The landlord did not apply for a review of the decision.

On June 27, 2011, the landlord served the tenant with another Notice to End Tenancy for Landlord's Use of Property. As with the first notice, the reason indicated on the second notice for ending the tenancy was that the landlord intended to convert the residential property for use by a caretaker. The tenant made an application to cancel the second notice to end tenancy.

I convened the hearing on this second application, and the tenant and a different agent for the landlord, MB, appeared in the hearing. The landlord acknowledged that the new notice to end tenancy was for the same reason as the first notice, and the landlord's reason for seeking to end the tenancy had not changed. The landlord served the second notice on the tenant because at the time of the first hearing, MB had a long-term engagement out of town, and she did not have time in the first hearing to send the landlord's evidence in a timely way. MB's son acted as agent in the first hearing, and the landlord wanted an opportunity to provide further evidence and clarification that they did not present in the first hearing.

Analysis

I find that the landlord served the second notice to end tenancy merely as an attempt to have their arguments heard a second time. The landlord was served with notice of the first hearing and given the opportunity to gather and submit their evidence, and to give testimony in the hearing. Furthermore, it was open to the landlord to request an adjournment in the first hearing, or to apply for a review of that decision, but they chose not to do so.

As this matter was previously heard and determined on its merits in the previous hearing, I determined that the second notice to end tenancy was not validly issued.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

As the tenant's application was successful, he is entitled to recovery of the filing fee for the cost of his application. The tenant may deduct \$50 from his next month's rent.

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 22, 2011.

Residential Tenancy Branch