



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, OPT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants for more time to apply to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, an Order to cancel a Two Month Notice, and an Order of possession of the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

Have the Tenants filed their Application to dispute the Two Month Notice within the timeframes allowed by section 49 the Residential Tenancy Act (the "Act")?

If not, have the Tenants established exceptional circumstances, pursuant to section 66(1) of the Act, to have the time period for filing their Application extended?

If so, should the Notice be cancelled?

Background and Evidence

The Tenants testified that the Two Month Notice to End Tenancy was personally served to them on August 01, 2011. Tenant MC testified that she had several conversations with the Landlord prior to August 01, 2011 about his intentions to renovate the rental unit and that the Landlord advised the Tenants that they could move into a different rental unit owned by the Landlord until the renovations were done. She also stated that the Landlord advised her that once the renovations were done they could move back into the rental unit if they wanted to do so. The Tenants explained that they have lived in the rental unit for 8 years and had a good relationship with the Landlord. Tenant MC testified that the Landlord's promises were verbal and not in writing.

Tenant MC testified that she received a phone call on July 31, 2011 from the agent for the Landlord that she will be coming by with a Notice to give to the Tenants. Tenant MC testified that on August 01, 2011, the Landlord was doing some work around the building and she was speaking with him about possible renovations to the rental unit. Tenant MC stated that the conversation with the Landlord was friendly; however, the

Landlord's agent came that day and served the Two Month Notice to End Tenancy. Tenant MC testified that on August 01, 2011 the Landlord was present when the Notice was served, but the Tenant stated that she did not believe that the Landlord agreed with what the agent was doing. The Tenants testified that the Landlord had a heated discussion with the agent which they saw; however, the agent left the Notice with the Tenants.

The Tenants stated that they did not believe the Notice was served with the Landlord's consent due to this heated discussion he had with the agent and because the Landlord never said anything to them about the Notice after August 01, 2011, and he continued to do work around the building and was always friendly to them. The Tenants stated that this was the first time they had ever been served with a Notice to End Tenancy for this rental unit.

Tenant MC stated that she is aware that the Landlord has a bad back and that is the reason the agent gave them for why he wanted to move into their suite on the ground floor. Tenant MC stated that in late September 2011 she decided to dispute the Two Month Notice as she was concerned that the Landlord may not have issued it in good faith. The Tenants confirmed that they still reside in the rental unit at this time.

The Landlord's agent SM attended the hearing with the Landlord and explained that he was not the agent who served the Notice to the Tenants. He stated that he was at the hearing to assist the Landlord and provide translation for the Landlord. The agent SM explained that the Landlord's main language is Italian, but he understands English. The Landlord stated that he authorized and asked his other agent, who is the manager, to serve the Two Month Notice on the Tenants. The Landlord confirmed that he has not cancelled the Notice given to the Tenants and he still requires the suite for his own use. The Landlord stated that he has not discussed the Two Month Notice with the Tenants, but that he had his manager/agent handle the matter.

The Landlord confirmed that he had a friendly relationship with the Tenants. He stated that he had prior conversations with the Tenants in July about renovating the suite for his own use, not for the Tenants' use. The Landlord stated that he advised the Tenants he would need the suite for himself and that they could move into a different suite in the building if they would like. He stated the Tenants did not take him up on his offer prior to the end of July so they missed the opportunity to get another suite from him as he had to rent it out to others. The Landlord stated that he did not argue with the manager/agent as stated by the Tenants and that he had specifically requested that his manager/agent handle the service of the Notice for him.

The agent SM explained at the hearing that the Landlord wishes to move into the suite as he has a disabling back condition and he will soon be in a wheelchair and the rental unit is on the ground floor. The agent SM stated that the Landlord is requesting an Order of possession.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenants were served with the Two Month Notice to End Tenancy for the Landlord's Use of Property on August 01, 2011.

The Two Month Notice to End Tenancy was not withdrawn by the Landlord or his agent rather it remained in the hands of the Tenants. The Notice is a formal legal document and the Tenants did not dispute it within the statutory time frames. The Tenants submitted a copy of both pages of the Notice with their Application for Dispute Resolution on September 29, 2011. As per section 49(8) of the Act, the Notice clearly states, on page 2, that the Tenants must file an Application for Dispute Resolution with the Residential Tenancy Branch within 15 days.

Section 66(1) of the Act only allows for more time for the filing of an Application if exceptional circumstances are established. Residential Tenancy Policy Guideline 36 states that the word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. This Policy provides the example of a tenant being in the hospital and unable to contact anyone to represent them at all material times.

The Tenants are not entitled to an extension of the time period for filing an Application for Dispute Resolution, as I find their reasons are not exceptional circumstances. As the Tenants failed to dispute the Two Month Notice in the 15 days allowed by the Act they are therefore conclusively presumed under section 49(9) of the Act to have accepted that the tenancy will end as stated by the Notice. As a result I dismiss the Tenants' Application.

As the Tenants' Application is dismissed and the Landlord requested an Order of possession at the hearing, pursuant to section 55 of the Act, I must grant this request. At the hearing, the Landlord and the Tenants agreed that the tenancy end date will be December 31, 2011.

I find that the Landlord is entitled to an Order of possession effective 1:00 P.M. on December 31, 2011.

For the benefit of both parties, please refer to section 51 of the Act for information on rights and obligations where the Tenancy is ending due to section 49, landlord use.

Conclusion

I dismiss the Tenants' Application.

The Landlord is granted an Order of Possession effective **December 31, 2011 at 1:00 P.M.**, and this Order may be filed in the Supreme Court and enforced as an Order of that Court.

This Order must be served on the Tenants and may be filed in the Supreme Court.

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: October 25, 2011.

Residential Tenancy Branch