



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This matter dealt with an application by the tenant to cancel a Two Month Notice to End Tenancy for the landlords' use of the property.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on September 25, 2011. The tenant provided the Canada Post tracking information for these documents. The landlord was deemed to be served the hearing documents on September 30, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the landlords' absence.

Both parties were provided the opportunity to present evidence and make submissions. As the landlord did not appear the submissions were made by the tenant. On the basis of the evidence presented at the hearing, a decision has been reached.

Issue(s) to be Decided

Is the tenant entitled to have the Two Month Notice to End Tenancy cancelled?

Background and Evidence

The tenant testifies that this tenancy started on February 01, 2011. She has provided a copy of the tenancy agreement which shows this is a fixed term tenancy which is not due to expire until January 31, 2012.

The tenant testifies she was not correctly served with the Two Month Notice as she found it lying on her back deck. The tenant states the landlord has put an effective date on this Notice as of October 31, 2011. The landlord has stated on the Notice that she intends to convert the unit for use by a caretaker, manager or superintendent of the residential property. The tenant states the landlord is not entitled to serve this type of Notice to her as she is still in a fixed term tenancy and states this is a single family residence and would not require a caretaker or manager.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant documentary evidence and affirmed testimony before me.

S. 49(2)(c) of the Act says a landlord is not entitled to serve the tenant with a Two Month Notice to End Tenancy any earlier than the date specified as the end of the tenancy if the tenancy agreement is a fixed term tenancy agreement. In light of this I find the Notice is invalid as the tenancy agreement does not end until January 31, 2012. Consequently the tenants' application to cancel the Two Month Notice to End Tenancy is upheld.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated August 26, 2011 is cancelled and the tenancy will continue

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 18, 2011.

Residential Tenancy Branch