



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property. The tenant was represented by legal counsel and her son as the tenant is currently hospitalized. Both parties appeared at the hearing 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.

I informed the parties that I had not been provided a copy of the Notice to End Tenancy under dispute. The tenant's son was adamant that he supplied one of the two Notices served upon his mother to the Residential Tenancy Branch and that it was not returned to him by the Branch staff. The landlord confirmed that she had not provided a copy of the Notice as evidence for this proceeding. I instructed both parties to send me a copy of the Notice in their possession, along with a certain letter dated September 23, 2011, by October 31, 2011. Both parties provided the requested documentation and I have considered only those documents in making my decision. Other documents submitted after the teleconference call were not accepted and not considered.

Issue(s) to be Decided

Should the *2 Month Notice to End Tenancy for Landlord's Use of Property* issued September 23, 2011 be upheld or cancelled?

Background and Evidence

Both parties provided consistent testimony that on September 11, 2011 the landlord presented the tenant's son with a 2 Month Notice to End Tenancy for Landlord's Use of Property and the tenant's son declined to accept it on his mother's behalf. Then on September 23, 2011 the landlord issued another 2 Month Notice to End Tenancy for Landlord's Use of Property (herein referred to as the Notice) and posted it on the door of the rental unit and sent it to the tenant via registered mail. The Notice was also accompanied by a letter from the landlord dated September 23, 2011 (herein referred to as the letter). Acting on his mother's behalf the tenant's son filed to dispute the Notice.

The tenant's counsel argued that the second page of the Notice does not indicate a reason for ending the tenancy, contrary to the requirements of the Act.

The landlord submitted that she printed off several copies of the 2 Month Notice from the Branch website and believes that the Notices served upon the tenant included a reason on the second page. However, even if a reason was not indicated on the Notices, the Notices were accompanied by a letter that explained the reason for ending the tenancy.

The tenant acknowledged that there was a letter that accompanied the Notices; however, the tenant's counsel argued that the reason indicated in the letter is insufficient to end the tenancy for landlord's use of property.

Analysis

Where a landlord wants to end a tenancy for landlord's use of property, the landlord must serve a Notice to End Tenancy, in the approved form, and indicate one of the reasons provided under section 49 of the Act.

With respect to the Notice to End Tenancy dated September 11, 2011 I find that it was not sufficiently served upon the tenant, in a manner that complies with the Act, and it is of no force or effect. Accordingly, the only Notice to End Tenancy before me is the Notice issued September 23, 2011.

Upon review of September 23, 2011 Notices received from both the tenant's son and the landlord I find that there is no reason indicated on either copy. Therefore, I find the landlord has not proven, on the balance of probabilities, that at least one of the Notices issued to the tenant on September 23, 2011 provided a reason on the second page.

Residential Tenancy Policy Guideline 11 deals with amending a Notice to End Tenancy. Where a Notice to End Tenancy contains an omission, a Dispute Resolution Officer may amend the Notice upon application and where satisfied that the person receiving the Notice knew, or should have known, the information that was omitted from the Notice, and it is reasonable in the circumstances.

With a 2 Month Notice, indicating a reason on the second page serves two purposes: 1) it communicates to the tenant the basis, under the Act, for which the tenancy is ending and provides the tenant the opportunity to dispute the Notice as appropriate; and, 2) it

obligates the landlord to fulfill the reason indicated on the Notice or be faced with having to provide additional compensation to the tenant.

I have considered whether the letter that accompanied the September 23, 2011 Notice clearly communicated the reason for ending the tenancy that would satisfy the two purposes identified above.

Upon review of the letter, I find the reason indicated in the letter does not clearly convey the same information as provided on the 2 Month Notice to End Tenancy or section 49 of the Act. Therefore, I do not amend the Notice and I find that it is invalid without a reason indicated on the second page.

In light of the above findings, the Notice to End Tenancy issued September 23, 2011 is cancelled with the effect the tenancy continues. The landlord remains at liberty to issue another Notice that complies with the requirements of the Act.

Given the tenant was successful in this application I award the filing fee to the tenant. The tenant is authorized to deduct \$50.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The Notice to End Tenancy is cancelled as it did not indicate a reason on the second page of the Notice, as required by the Act. The tenant is authorized to recover the filing fee by deducting \$50.00 from a subsequent 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: November 03, 2011.

Residential Tenancy Branch