



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for an order to cancel a Two Month Notice to end tenancy for a subsidized rental unit and to cancel a letter of November 24, 2011 from the Landlord stating he must vacate the unit due to a breach of policies.

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.

Preliminary Matter(s)

The Tenant testified that the Landlord issued a letter on November 24, 2011 advising him that he must vacate the rental unit by November 28, 2011 due to breach of their policies. The Tenant states that he disputes this letter and he has not vacated the rental unit. The Tenant submitted a copy of the November 24, 2011 letter from the Landlord in his evidence.

The Landlord testified that this letter was not a proper notice and was not on the proper form and they have withdrawn this. The Landlord states that the Two Month Notice issued October 27, 2011 is the only Notice in effect in relation to the tenancy.

I have examined the letter of November 24, 2011 issued by the Landlord to the Tenant and considered the information provided by the parties and I find that it is not a valid or proper notice in accordance with the requirements of the Act. As a result I find the Landlord's letter of November 24, 2011 is of no effect.

Issue(s) to be Decided

Has the Tenant filed his Application to dispute the Two Month Notice within the timeframes allowed by section 49 the Residential Tenancy Act (the "Act")?

Background and Evidence

The parties agree that the rental unit is subsidized housing with a rent of \$750.00 per month due on the first of each month. The parties agree that the tenancy commenced

on August 01, 2011. The parties agree that the Landlord has a security deposit of \$375.00.

The Landlord testified that they have an agreement with BC Housing to provide subsidized family housing. The Landlord states that the value of the rental unit is \$1400.00 per month, however, under the housing subsidy agreement the Tenant and his family rented this for \$750.00 per month. The Landlord stated that the Tenant ceased to qualify for the subsidized housing when his wife and children moved out of the rental unit. The Landlord stated that on October 27, 2011, she served the Two Month Notice to End Tenancy because the Tenant does not qualify for the subsidized rental unit. The Notice to End Tenancy states that the tenancy will end on December 31, 2011.

The Tenant testified that the Two Month Notice to End Tenancy was taped to the door of his rental unit on October 27, 2011. The Tenant stated that he intended to move out by the date indicated by the Notice, but he has not found a place yet and he is upset with the Landlord because they tried to issue a letter on November 24, 2011 telling him to move out sooner. The Tenant filed his Application for dispute resolution on November 24, 2011. The Tenant did not request more time on his Application. At the hearing the Tenant indicated that while he thinks the Two Month Notice is unfair, he indicated that when he received it he did not dispute it and planned to move out. The Tenant stated that it was the Landlord's letter of November 24, 2011 that caused him to file the Application for dispute resolution.

The Landlord requested an order of possession to be effective in accordance with the Notice at the hearing.

Analysis

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

I find that the Tenant was properly served with the Two Month Notice to End Tenancy by the Landlord on October 27, 2011 as the Landlord taped it to the door of his rental unit on that date.

The Notice is a formal legal document and the Tenant did not dispute it within the statutory time frames. The Tenant submitted a copy of both pages of the Notice with his Application for Dispute Resolution on November 24, 2011. As per section 49.1(5) of the Act, the Notice clearly states, on page 2, that the Tenant 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. The Tenant did not file a request for more time on his Application nor did he request this at the hearing. The Tenant did not prove that any exceptional circumstances prevented him from filing within the statutory

timeframes. As the Tenant failed to dispute the Two Month Notice in the 15 days allowed by the Act he is therefore conclusively presumed under section 49.1(6) of the Act to have accepted that the tenancy will end as stated by the Notice. As a result I dismiss the Tenant's Application.

As the Tenant's 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.

The Notice was taped to the Tenant's door on October 27, 2011 as confirmed by the Tenant and Landlord. A Notice served in this manner is deemed to have been served within three days. Pursuant to section 49.1 (3), I find that the Two Month Notice correctly states that the tenancy will end on December 31, 2011.

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

Conclusion

I dismiss the Tenant's 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 Tenant 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: December 12, 2011.

Residential Tenancy Branch