



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants' application to cancel the Two Month Notice to End Tenancy for landlord's use of the property; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; the landlord was served on November 01, 2011 by registered mail. Mail receipt numbers were provided in the tenants' documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenants appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered

Issue(s) to be Decided

- Are the tenants entitled to cancel the notice to end tenancy?

Background and Evidence

The tenants' testify that this tenancy started on March 15, 2011. The tenants state they did sign a tenancy agreement for a fixed term tenancy of one year with the landlord however despite repeated requests the landlord has not yet provided them with a copy of this agreement. Rent for this unit is \$650.00 per month plus 30 percent of the Hydro bills.

The tenants' testify the landlord has served them with a Notice to End Tenancy. The tenants have provided a copy of this Notice in evidence. The tenants state the Notice is

actually a One Month Notice to End Tenancy which has been altered by the landlord to attempt to make it a Two Month Notice to End Tenancy. The Notice is dated October 30, 2011 and has an effective date of December 30, 2011. The Notice has no reasons checked off but the tenants state the landlord has hand written on the Notice the following reason:

“At present I am living on rent at [address] with my children. I want to move back into my own house at [address]. Please vacate my house as per the date mentioned on page one.”

The tenants testify that the landlord cannot give them a Two Month Notice to End Tenancy as they have a fixed term tenancy agreement in place and this is an incorrect Notice. Therefore the tenants seek to cancel the Notice.

Analysis

I have carefully considered all the evidence before me, including the sworn, undisputed testimony of the tenants. In Order to be a valid document a Notice to End Tenancy must relate to the correct type of notice given to a tenant to end a tenancy. The landlord must serve the tenant with either a 10 Day Notice for unpaid rent, a One Month Notice for cause or a Two Month Notice for landlord's use of the property. In this matter I find the landlord has indicated that she wishes to move back into the rental unit but has served the tenant with an altered One Month Notice to End Tenancy for this purpose. In Order for the landlord to end this tenancy because the landlord seeks to move back into the rental unit the landlord must serve the tenants with a valid Two Month Notice.

I further find the tenants have testified that they signed a lease agreement with the landlord for one year. This agreement would not end until March 15, 2012. Although the tenants have not been able to provide a copy of the lease agreement the landlord has not appeared to dispute the tenants' testimony. Therefore I refer the landlord to s.49 (2)(c) of the Act which says, in part, that if the tenancy agreement is a fixed term tenancy agreement, the landlord is not entitled to end the tenancy by serving the tenants with a Two Month Notice any earlier than the date specified as the end of the tenancy.

Consequently as I have no evidence to the contrary that this is a fixed term tenancy and as I deem this Notice to be invalid as it is not a two Month Notice on an approved form; I uphold the tenants' application to cancel the Notice. The Notice is therefore set aside and the tenancy will continue.

Conclusion

The tenants' application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated October 30, 2011 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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 22, 2011.

Residential Tenancy Branch