



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenant filed on June 01, 2012 to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated May 22, 2012, with an effective date of July 31, 2012. The tenant further seeks recovery of the filing fee in this matter.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. At the outset the landlord requested an Order of Possession for the effective date. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice issued was a valid Notice issued, in good faith, for the stated reasons.

The style of cause in this matter is altered to reflect the proper dispute address.

Issue(s) to be Decided

Is the Notice to End tenancy valid and issued, in good faith for valid reasons?
Should the Notice to End dated May 22, 2012 be set aside?
Is the landlord entitled to an Order of Possession?
Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant submitted a copy of the 2 Month Notice to End . The landlord did not advance or provide any document evidence to this matter. The Notice to End was issued by the prospective owner (and prospective landlord) of the rental unit for the following reason;

-the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant disputes the Notice to End on the basis the Notice to End was not properly issued in accordance with the provisions of the Act by their landlord and that the respondent in this action was not the landlord when they issued the Notice to End. The landlord testified they became the *legal owner* of the rental unit on May 30, 2012 –

the day the sale of the residential property completed. The landlord testified that on the day they issued the Notice to End on May 22, 2012 they had a binding sale agreement and therefore, in their determination, became the landlord entitled to possession of the rental unit as per the Definition provisions in the Act and entitling them to validly issue the tenant the 2 Month Notice to End, in place of the actual legal landlord of the day. The landlord testified that they acted in good faith on the advice of their realtor in issuing the Notice to End.

Analysis

In this type of application, the burden of proof rests with the respondent (landlord) to provide evidence that the Notice was validly issued for the stated reason.

Section 49 of the Act – **Landlord's Notice: Landlord's use of property**, clearly states that a landlord may end a tenancy under the provisions of Section 49 of the Act by giving notice to end the tenancy. In this matter, I find that the respondent may well have issued the Notice to End in good faith and for a valid reason, but they were not the tenant's landlord, or the owner of the rental unit on May 22, 2012. I find that at that time, the respondent may well have held a *prospective entitlement* to possession of the rental unit but not a legal entitlement. Therefore, I decline to consider the respondent's argument that they were a person entitled to possession of the rental unit (the landlord) when they issued the tenant the Notice to End. As a result, I find the Notice to End was not validly issued by the landlord, and is void. Therefore, **I Order** that the Notice to End dated May 22, 2012 **is cancelled and of no effect**. The tenant is entitled to recover the filing fee for this application.

If necessary, the respondent – now landlord - is at liberty to issue another new valid Notice to End for valid reason.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

I Order the tenant may deduct **\$50.00** from a future rent in satisfaction of the filing fee.

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: June 20, 2012

Residential Tenancy Branch