



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, CNQ, OLC, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Landlord's Use of Property; to set aside a Notice to End Tenancy Because Tenant Does Not Qualify for Subsidized Rental Unit; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing the Application for Dispute Resolution.

Both parties were represented at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Two Month Notice to End Tenancy that was served to the Tenant should be set aside; whether there is a need for an Order requiring the Landlord to comply with the *Act*; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenant agree that the Tenant was living in the rental unit prior to the Respondent becoming the Landlord of the property.

The Agent for the Landlord and the Tenant agree that on May 12, 2012 the Agent for the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property/Two Month Notice to End Tenancy Because the Tenant Does Not Qualify for Subsidized Rental Unit. The parties agree that the Notice to End Tenancy has a declared effective date of July 31, 2012; that it is signed by the Agent for the Landlord; and that it is not dated.

The Agent for the Landlord contends that the failure to date the Notice to End Tenancy should not render the Notice ineffective, pursuant to section 10(2) of the *Act*.

Analysis

Section 49 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons, including that a landlord has all the necessary permits and approvals required by law and intends, in good faith, to demolish the unit; to renovate and repair it in a manner that requires the rental unit to be vacant; to convert the residential property to strata lots; and to convert the residential property into a not for profit housing cooperative.

Section 49(7) of the *Act* requires that a notice to end tenancy served pursuant to this section must comply with section 52 of the *Act*.

Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be in writing, and must be signed and dated by the landlord or the tenant giving the notice.

In the circumstances before me I find that the Landlord did not date the Two Month Notice to End Tenancy that was served to the Tenant on May 12, 2012. I therefore find that the Notice was not effective, as the Notice does not comply with section 52(a) of the *Act*.

Section 10(2) of the *Act* specifies that deviations from an approved form that do not affect the substance and are not intended to mislead do not invalidate the form used. The *Act* defines an “approved form” as “the form approved by the director under section 10(1) [director may approve forms] for the purposes of the section in which it appears”. In my view, section 10(2) of the *Act* authorizes a party to serve outdated forms, such as a notice to end tenancy, or facsimiles of such forms, provided the outdated or substituted form contains all the requisite information of the approved form.

In my view, section 10(2) of the *Act* does not exempt a Landlord from including information on a Notice to End Tenancy, such as the date the Notice was signed, when that information is specifically required by section 52(a) of the *Act*.

Conclusion

As the Two Month Notice to End Tenancy that was served to the Tenant on May 12, 2012 is not effective, I grant the Tenant’s application to set aside this Notice. The Landlord retains the right to serve the Tenant with another Two Month Notice to End Tenancy.

I do not find there is a need to make a specific order requiring the Landlord to comply with the *Act* or the tenancy agreement, as the Landlord’s failure to comply with section 52 has been remedied. Whether or not the Landlord has the right to end this tenancy pursuant to section 49 of the *Act* is a matter to be determined at a future dispute resolution proceeding, assuming the Landlord serves the Tenant with another Two Month Notice to End Tenancy and the Tenant disputes the Notice to End Tenancy.

I find that the Tenant's application has merit and that he is entitled to recover the filing fee from the Landlord that he paid for filing this Application for Dispute Resolution. I therefore authorize him to reduce one rent payment by \$50.00 in compensation for the fee he paid to file his Application for Dispute Resolution.

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 12, 2012.

Residential Tenancy Branch