



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order to cancel a one month Notice to End Tenancy.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

During the course of the hearing the Tenants submitted that if they were not successful in having the Notice cancelled, they should be given six months' rent in compensation and have a later date to move out. It was explained to the Tenants that they had not requested monetary compensation in this Application and therefore, that issue could not be addressed. The Tenants have leave to apply for monetary compensation if they so choose.

Issue(s) to be Decided

Should the one month Notice to End Tenancy be cancelled?

Background and Evidence

In accordance with the rules of procedure, the Agent for the Landlord went first and explained why the Tenants were served with a one month Notice to End Tenancy.

The Agent explained that the rental unit property is located in a motel. The Agent testified that the motel was not zoned for long term accommodation in the municipality where it is located. In evidence the Landlord submitted a letter memorandum from the local municipality written by the building inspector. The inspector sets out in the letter memorandum that the current zoning of the rental unit property does not permit monthly rentals of suites. The letter memorandum explains that this deficiency must be addressed prior to the next inspection.

The Agent testified that this caused the Landlord to issue a one month Notice to End Tenancy for cause, in that the rental unit had to be vacated to comply with a government order, and served the Tenants with it personally on June 15, 2012. The Notice has an effective date of August 1, 2012.

In reply, the Tenants argued that the letter memorandum is not a government order. They further submitted that they have medical issues which makes it difficult for them to move and that the eviction has taken them by surprise.

The Tenants argue they should be “grandfathered in” as they had occupied the rental unit for a period of over four years. They testified they had a rental agreement with the previous owner. They testified they had no explanation from the Landlord why the correct zoning had not been done. They argue the Landlord is responsible for the zoning.

The Agent for the Landlord replied that they enquired with the municipality about how the tenancy could continue and were informed the Tenants would have to move into a different rental unit each week.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenants’ Application must be dismissed, as I find the Notice to End Tenancy is valid and the Tenants had insufficient evidence that it should be cancelled.

As was explained to the parties at the time of the hearing, I find the rental unit must be vacated in order to comply with the order from the local municipality. Under section 47 of the Act, the Landlord may end a tenancy for this cause. There is no right under the Act for the Tenants to be grandfathered in this rental unit.

Although the Tenants *may* have a monetary claim against the Landlord for compensation, which I have not considered the merits of, that was not the Application they made.

Therefore, I order that the Application of the Tenants be dismissed, and the tenancy will end at 1:00 p.m. on the effective date of the Notice: August 1, 2012.

This decision is final and binding, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 16, 2012.

Residential Tenancy Branch