



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property and Orders for compliance with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing 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.

Issue(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy?
2. Is it appropriate or necessary to issue Orders for compliance to the landlord?

Background and Evidence

The fixed term tenancy commenced September 1, 2011 and is set to expire on September 1, 2013. The tenant is required to pay rent of \$1,600.00 on the first day of every month. The tenancy agreement provides that the following services and facilities are included in rent: dishwasher, water, sewage disposal, among other things.

Although I was not provide a copy, both parties provided consistent testimony that on May 31, 2012 the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) with an effective date of July 31, 2012 or August 31, 2012. The landlord stated that she gave the notice as her circumstances have changed and she needs a place to live.

Below I have summarized the tenant's requests for Orders for compliance and the landlord's response to these requests:

Landlord's mail

The tenant requested that the landlord forward her mail to her new location as it is disruptive for him to handle her mail and make it available to her. The landlord indicated the majority of her mail has since been forwarded but acknowledged some mail has not. The landlord agreed to have any remaining correspondence forwarded.

Dishwasher

The tenant requested the landlord repair the dishwasher which stopped working approximately two months ago. The landlord agreed she is responsible for repairing it and explained she has not done so because she does not have the money. The landlord requested she be provided two weeks to have the dishwasher repaired.

Water bill

The tenant requested the landlord pay the outstanding water bill as he has received Notices of Disconnection. The landlord submitted that she has paid some of the outstanding bill and was uncertain as to the balance because the mail was being delivered to the rental unit. The landlord agreed to pay the outstanding water bill the day of this hearing.

Septic pumping bill

The tenant requested the landlord pay the outstanding septic pumping bill that was incurred because the tank became full and needed pumping while the landlord was out of the country. The landlord was agreeable that she is responsible for the septic pumping bill but explained she did not have the money to do so. The tenant was agreeable to paying the septic pumping bill and deducting it from next month's rent. The landlord is in possession of post-dated rent cheques and the tenant is in possession of the septic pumping bill.

Landlord's service address

The tenant requested he be provided a service address for the landlord. The tenancy agreement does not provide a service address in the space provided. The landlord indicated she is in the process of changing locations and agreed to provide the tenant with a PO Box once she attains one. The landlord confirmed that the tenant has the landlord's current phone number.

At the conclusion of the hearing I gave verbal orders to the parties and have recorded those orders and my findings in this decision.

Analysis

Upon review of the tenancy agreement I accept that the tenancy is for a fixed length of time set to expire September 1, 2013. Where a landlord wishes to end a tenancy for landlord's use the effective date of the Notice to End Tenancy must not be any earlier than the expiry date of the fixed term. The landlord's personal circumstances do not form a basis to avoid the requirements of the Act. Accordingly, I find the Notice to End Tenancy issued May 31, 2012 does not comply with the requirements of the Act and I cancel the Notice with the effect that this tenancy shall continue until such time it legally ends.

With respect to the tenant's request for Orders for compliance I provide the following Orders to both of the parties:

1. The landlord is ORDERED to have her mail forwarded to a location other than the rental unit.
2. The landlord is ORDERED to immediately provide the tenant with a service address at which the tenant may serve documents upon the landlord.
3. The landlord is ORDERED to have the dishwasher repaired or replaced within two weeks of today's date.
4. The landlord is ORDERED to immediately pay the water bill so that the account remains in good standing.
5. The landlord is ORDERED to return the tenant's post-dated rent cheque for August 2012 and to accept a replacement cheque for the rent less a deduction for the septic pumping bill.
6. The tenant is ORDERED to provide the septic pumping bill to the landlord along with the reduced rent cheque for August 2012.

I further award the filing fee to the tenant and he is authorized to deduct an additional \$50.00 from a subsequent month's rent.

In light of the above orders and awards, the tenant is authorized to deduct the amount of the septic pumping bill and the \$50.00 filing fee from rent otherwise payable to the landlord. Upon deducting these amounts from rent the landlord must consider the rent to be paid in full.

Conclusion

The Notice to End Tenancy for Landlord's Use of Property issued May 31, 2012 is cancelled and the tenancy shall continue. I have issued orders to both the landlord and

tenant with this decision. The tenant is authorized to deduct the amount of the septic pumping bill and the filing fee from rent 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: July 05, 2012.

Residential Tenancy Branch