



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on July 27, 2012. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on May 25, 2002 as a month to month tenancy. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenants received an order from the Residential Tenancy branch to reduce the rent to \$650.00 per month until the Landlord complies with section 32 and completes repairs to the rental unit. The Tenants paid a security deposit of \$350.00 in May, 2002

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated July 16, 2012 by registered mail on July 16, 2012. The Effective Vacancy Date on the Notice is August 31, 2012. The Tenant is living in the unit and the Landlord said he wants to end the tenancy.

The Landlord said the reason on the 1 Month Notice to End Tenancy is that the unit must be vacated to comply with a government order. On questioning, the Landlord said he did not have a Government Order that stated the rental unit that the Tenants are living in had to be vacated. The Landlord said he had a secondary suite in the lower level of the rental complex that had to be decommissioned to comply with Municipal bylaws. The Landlord said the secondary suite is decommissioned now and he is trying to renovate the lower and upper units to make one rental unit. The Landlord said to do this he needs the Tenants to move out. The Landlord continued to say that he has had previous hearings to try to evict the Tenants, but he has been unsuccessful and he is very frustrated with the process.

The Tenant said the Landlord had an illegal suite in the basement of the rental complex and the Municipality told the Landlord he had to decommission the secondary suite. The Tenants continued to say that the Landlord now wants to combine their suite with the lower unit and rent it out as one rental unit. The Tenants said they do not want to move and that they are complying with the tenancy agreement so they do not believe they should be evicted.

The Tenants continued to say that the Landlord does not have a government order that says that their unit has to be vacated; therefore the 2 Month Notice to End Tenancy for Cause should be cancelled as the reason given for the notice is not valid.

Both parties agreed that there is no government order to vacate the Tenants' rental unit.

Analysis

Section 47 (k) of the Act says a landlord may end a tenancy by giving a notice to end tenancy if the landlord receives a written order from a government; federal, provincial or municipal requiring the rental unit to be vacated.

The Landlord said this is the reason and basis for the Landlord issuing the 2 Month Notice to End Tenancy for Cause dated July 16, 2012. Both parties agreed there is no government order to vacate the Tenants rental unit; therefore I find the Tenants have established ground to have the Notice to End Tenancy dated July 16, 2012 cancelled. I find for the Tenants and grant an Order to cancel the Notice to End Tenancy for Cause dated July 16, 2012.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the September 2012 rent. The September, 2012 rent is adjusted from \$650.00 to \$600.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated July 16, 2012 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

I order the September, 2012 rent payment to be adjusted to \$600.00 so that the Tenant can recover the filing fee of \$50.00 for this proceeding from 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*.

Residential Tenancy Branch