



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

The Landlord's Agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery July 27, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on December 1, 2011 as a fixed term tenancy with an expiry date of November 30, 2014. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$1,000.00 in December, 2011.

The Landlord's Agent said he issued a 2 Month Notice to End Tenancy for the Landlord's use of the property dated February 1, 2012, on February 1, 2012 by personal delivery to the Tenants with an effective vacancy date of March 31, 2012. The Landlord's Agent continued to say he was hired by the new owner of the property S.S. to end the tenancy so that the new owner could take possession of the property. The Landlord's Agent said he has only recently become aware of the tenancy agreement between the Tenants and a former part owner of the rental unit D.H. The Landlord's lawyer K.I. said that the court case between the owners is completed and the owner of the property is S.S. The Landlord's lawyer said the court documents indicate the property transferred ownership January 31, 2012, but an appeal stayed the transfer until July, 2012 when the appeal was denied.

The Landlord's Agent said they do not accept the tenancy agreement because the previous part owner of the rental unit did not have authorization to rent the unit and the tenancy agreement may be the previous part owners way of causing the new owner difficulties. The Agent continued to say the Tenants have not paid rent to the correct owner of the rental unit from January, 2012 to July, 2012. The Landlord's Agent continued to say that the Tenants did pay the August rent to the proper owner S.S through the Agent's property management company. The Agent said he has not cashed the cheque because if they are successful with their application for an Order of Possession under the 2 Month Notice to End Tenancy they will return the August, 2012 rent as per section 51 of the Act.

The Landlord's Agent said the tenancy agreement may not be valid and as such he requested an Order of Possession based on the 2 Month Notice to End Tenancy for the Landlord's Use of the Property dated February 1, 2012.

The Tenants said that they made a tenancy agreement with the former part owner D.H. of the property dated October 4, 2011 and they moved into the rental unit on December 1, 2011. The Tenants' continued to say all their dealings have been with D.H. and they paid him a security deposit of \$1,000.00 in December, 2011 and they have paid him rent for each month. The Tenants submitted a copy of the tenancy agreement, a copy of Residential Tenancy Policy Guideline #30 (Fixed Term Tenancies) and rent receipts from December, 2011 to July, 2012. The Tenants said they want to continue the tenancy as per the tenancy agreement and since it is a fixed term agreement, a 2 Month Notice to End Tenant for the Landlord's Use of the Property cannot end the tenancy according to the Residential Tenancy Act.

Both parties were asked to make settlement offers, which they did and both offers were declined.

Analysis

Section 49 (2) (c) of the Act says that a notice given under this section (2 Month Notice to End Tenancy) may end a tenancy but if the tenancy agreement is a fixed term tenancy agreement , the tenancy cannot earlier than the date specified as the end of the tenancy.

The tenancy agreement submitted by the Tenants is a fixed term agreement with an end of tenancy date of November 30, 2014. I understand the Landlord's Agent and Lawyer may dispute the validity of this tenancy agreement, but in the absence of any evidence to invalidate the tenancy agreement; I accept it as a valid agreement for this tenancy. Consequently the 2 Month Notice to End Tenancy dated February 1, 2012 that the Landlord's Agent issued to the Tenants cannot end the tenancy prior to

November 30, 2014 the end date in the tenancy agreement, unless there is a mutual agreement to end the tenancy signed by both the Landlord and the Tenants to end the tenancy. As a result I find the Tenants have established grounds to cancel the 2 Month Notice to End Tenancy date February 1, 2012. I order the 2 Month Notice to End Tenancy for the Landlord's Use of the Property date February 1, 2012 is cancelled and the tenancy is to continue as indicated in the tenancy agreement.

I also find that as the Landlord was unsuccessful in this matter he is to bear the cost of the filing fee of \$50.00 for this proceeding which the Landlord has already paid.

Conclusion

The Landlord's application is dismissed without leave to reapply and 2 Month Notice to End Tenancy for the Landlord's Use of the Property dated February 1, 2012 is cancelled and the tenancy is order to continued as indicated in the tenancy agreement dated October 4, 2011.

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