



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use and return of the filing fee costs.

The tenant provided affirmed testimony that on October 2, 2012 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the landlord via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. The tenant used the landlord's service address supplied on the tenancy agreement and Notice to End Tenancy in dispute. The Canada Post tracking information indicated that the landlord signed accepting the mail on October 7, 2012.

These documents are deemed to have been served in accordance with section 89 of the Act; however the landlord did not appear at the hearing.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on September 25, 2012 be cancelled?

Background and Evidence

The tenant provided a copy of an initial fixed-term tenancy agreement that commenced on April 16, 2011, ending April 30, 2012. The tenant was to vacate at the end of the term.

On April 8, 2012, the tenant signed and returned an addendum (extension of lease) to the tenancy agreement that the landlord issued on March 28, 2012. This extension agreement indicated the tenancy would continue as a fixed-term to April 30, 2013. A copy of this extension agreement was supplied as evidence.

The tenant supplied copies of the post-dated cheques he has issued to the landlord to the end of the current fixed-term, with a copy of a Notice of Rent Increase issued by the landlord on January 18, 2012, effective May 1, 2012.

On September 28, 2012, the tenant received a 1 Month Notice to End Tenancy for Landlord's use that was issued on September 5, 2012. The Notice was sent to the tenant via registered mail. The Notice indicated that a close family member of the landlord's was moving into the unit and that the tenant must vacate by November 30, 2012.

Analysis

I find, in the absence of the landlord who was served Notice of this hearing; that the 1 Month Notice to End Tenancy issued on September 25, 2012 is of no force or effect. The tenant provided ample evidence to show that his fixed-term tenancy has been extended to April 30, 2013.

Section 49(2) of the Act provides:

2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy

(Emphasis added)

As the landlord issued the Notice for date that precedes the end of the fixed-term tenancy, I find that the Notice is unenforceable and that the tenancy will continue until it is ended as provided by the Act.

As the application has merit I find that the tenant is entitled to return of the \$50.00 filing fee. I have issued the tenant a monetary order which is enforceable through Small Claims Court. The tenant is at liberty to withdraw one of his post-dated rent cheques and adjust the amount for month by the sum of \$50.00.

Conclusion

The 1 Month Notice to End Tenancy for Landlord's use issued on September 25, 2012, is of no force, the tenancy will continue until it is ended as provided by the Act.

The tenant is entitled to filing fee costs.

This decision is final and binding on the parties, unless 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 *Residential Tenancy Act*.

Dated: November 02, 2012.

Residential Tenancy Branch