

DECISION

Dispute Codes CNL, FF

Introduction

This is an application filed by the Tenant for an order cancelling the notice to end tenancy issued for Landlord's use of the rental property and recovery of the filing fee.

Both parties attended the hearing in person and gave testimony. As both parties have attended and have confirmed receipt submitted evidence, I am satisfied that both parties have been properly served.

Neither party submitted a copy of the signed tenancy agreement, but have agreed that the copy submitted during the hearing was accurate.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy issued for Landlord's use?

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on June 15, 2012 on a fixed term tenancy ending on June 30, 2012. The monthly rent is \$900.00 payable on the 1st of each month and a security deposit of \$450.00 was paid.

Both parties agreed that the Tenant was served with a 2 month notice to end tenancy issued for Landlord's use dated October 14, 2012 on the same date. The reason for cause indicated is, "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." The effective date shown is December 15, 2012. Both parties agreed that the effective date was in error as stated in the Act and is corrected to December 31, 2012. The Landlord's Agent states that her parents applied for visas in October of 2012 and were granted permission in the same month. The rental space is to be used for their occupancy.

Residential Tenancy Policy Guideline #30 states,

“During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For example, during the fixed term a landlord may end the tenancy if the tenant fails to pay the rent when due. A proper Notice to End Tenancy must be served on the tenant. During the fixed term a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (the Legislation). Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

A landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for reasons such as owner occupancy or purchaser occupancy, the landlord must serve a proper Notice to End Tenancy on the tenant. Proper notice in respect of purchaser occupancy includes the pre-requisites to issuance of the Notice to End: any conditions precedent removed from the sales agreement and the purchaser intends in good faith to occupy the rental unit and requests the vendor in writing to issue the Notice to End. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may **not**, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.”

I find based upon the submitted evidence of both parties that the Tenant has established a claim to cancel the 2 month notice to end tenancy issued for Landlord's use. The Landlord may not end the fixed term tenancy prior to the end date of June 30, 2013. The notice dated October 14, 2012 is set aside and the Tenancy shall continue in full force and effect.

The Tenant is entitled to recovery of the \$50.00 filing fee. I order that the Tenant may withhold \$50.00 one-time from the monthly rent in January 2013 to satisfy this claim.

Conclusion

The notice dated October 14, 2012 is set aside and the Tenancy shall continue. The Tenant may withhold \$50.00 one-time from January 2013 rent when due to recover the filing fee.

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: December 03, 2012.

Residential Tenancy Branch