



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened on the tenant's application to have set aside a Notice to End Tenancy for cause served on October 31, 2012 and setting an end of tenancy date of November 30, 2012.

As a matter of note, this tenancy was the subject of a hearing on October 17, 2012 on the tenant's application for an order that the landlord comply with the *Residential Tenancy Act*. The landlord has submitted arguments in that hearing that the tenancy fell under the definition of transitional housing and is exempted from the jurisdiction of the Residential Tenancy Branch by section 4(f) of the Act.

In his decision of October 18, 2012, the Arbitrator that, with respect to this specific tenancy only, the landlord had not provided sufficient proof of all of the elements necessary to establish that the tenancy was for transitional housing. In consequence, he granted the tenant an Order of Possession and noted that the landlord remained at liberty to serve the tenant with an Notice to End Tenancy under the *Residential Tenancy Act*.

The landlord subsequently issued the notice of October 31, 2012 which is the subject of the present hearing.

I noted that while the landlord had submitted substantial evidence in support of the jurisdiction arguments, there was no evidence in support of the Notice to End Tenancy for cause. As the question of jurisdiction has been argued in the previous hearing, it is *res judicata* and I do not have the authority to hear it again or vary that finding in the present application.

The landlord stated that a decision had been made by officials of the housing society to challenge the finding that the subject tenancy was within the jurisdiction of the *Act* by way of one of the review processes available under the *Act*.

That, combined with the fact that the tenant's conduct that had led to the notice had abated, led the landlord to withdraw the Notice to End Tenancy of October 31, 2012 to await the outcome of pending review proceedings with respect to the jurisdictional question.

Accordingly, I find that the Notice to End Tenancy of October 31, 2012 is of no force or effect and the tenancy continues.

Conclusion

The landlord withdrew the Notice of Tenancy contested by the tenant in the present application. Therefore, the tenancy continues.

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 05, 2012.

Residential Tenancy Branch