



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL and FF

Introduction

This hearing was convened on an application by the tenants on March 15, 2013 seeking to have set aside a Notice to End Tenancy for landlord use dated February 28, 2013 and setting an end of tenancy date of April 30, 2013.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or upheld?

Background and Evidence

This tenancy began on August 19, 2012 at a monthly rent of \$950 and the tenants paid a security deposit of \$425 on August 7, 2012.

It is a matter of significance that “section 2. Length of Tenancy” was altered on the rental agreement in a manner that the landlord stated differs from the copy in his possession that he signed.

Specifically, item a. that provides a check box to select a month to month tenancy appears to have been selected and then struck out. Item b., which indicates a fixed term tenancy, has been selected with length of time written in as, “1year or longer” with an end of tenancy date of August 19, 2013. An additional written insert adds “5 years or later as stated verbally and faxed.”

The changes are not initialled by either party and the tenants concur that they amended their copy of the agreement after it was signed by the landlord as they believed that there had been a meeting of the minds as to their intention for the tenancy to be long term.

As to the Notice to End Tenancy, from the options available on the notice to end the tenancy, the landlord selected the item which coincides with section 49(5) of the Act and reads:

“All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.”

The tenants submitted into evidence a copy of an email from the landlord dated 4/3/2013 stating that, “As a courtesy to you, I called you last week to let you know I am selling the house and need some time to do repairs and maintenance.”

The tenants noted the difference between reasons given in the notice, (house sold, conditions removed and seller wants vacant possession) and the email (need possession to do maintenance and prepare for sale.)

The landlord stated that he had selected the option he did because it appeared to be the closest fit to his intentions but he concurred that there was no pending offer with conditions removed.

Analysis

As Notice to End Tenancy for landlord use under section 49(5) of the *Act* requires an offer with conditions satisfied and a written request for vacant possession from the purchaser, I must find that the Notice to End Tenancy has not met the requirements of the *Act*.

Therefore, the Notice to End Tenancy of February 28, 2013 is set aside.

As the application has succeeded on its merits, I hereby order that the tenants are entitled to recover the filing fee for this proceeding from the landlord and that they may do so by withholding \$50 from their next rent payment.

Conclusion

The Notice to End Tenancy of February 28, 2013 is set aside and the tenancy continues.

The tenants may retain \$50 from their next rent due payment to recover their filing fee for this proceeding.

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: April 10, 2013

Residential Tenancy Branch

