



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT. CNL, O

Introduction

This was a hearing with respect to the tenants' application to cancel a two month Notice to End Tenancy for landlord's use and for more time to make an application to dispute the Notice to End Tenancy. The hearing was conducted by conference call. The tenants and the named respondent called in and participated in the hearing. The respondent J.C-W did not call into the hearing and did not participate.

Issue(s) to be Decided

Should the Notice to End Tenancy for landlord's use dated April 26, 2013 be cancelled?

Background and Evidence

The rental unit is a house in Kelowna. On April 26, 2013 the respondent, Mr. B.W. served the tenants with a copy of a 2 month Notice to End Tenancy for landlord's use. The landlord's address on the Notice to End Tenancy was incorrect and Mr. B.W. gave the tenants a second copy of the Notice to End Tenancy with a corrected address. After they received the Notice to End Tenancy, the tenants received an e-mail message from the respondent, J.C-W, who is B.W.'s wife; she instructed the tenants to: "Please disregard the Notice that (B.W.) served you with today."

The tenants testified that the tenancy began in 2001. The respondents, who live in Calgary are a married couple, but living separate and apart. They are the joint owners of the rental property. In 2004 the respondent, B.W. was injured in a motorcycle accident. He suffered a head injury. The tenants said that since 2004 they have dealt exclusively with J.C-W. who has acted as the landlord and to whom they have always paid rent. The tenants said that they did not file their application for dispute resolution

until May 14, 2013 because they received instructions from J.C-W to ignore the Notice to End Tenancy. After they spoke to an information officer at the Residential Tenancy Branch, they decided it would be prudent to file an application to dispute the Notice to End Tenancy. For reasons that were not clear, the tenants did not send the filed application to the respondents by registered mail until June 6, 2013. The respondent, B.W. said that he did not receive the document until June 7, 2013. He said that he did not receive a copy of the e-mail from his wife and he did not have an opportunity to submit evidence in response to the tenants' application. He said that the evidence he would have submitted was evidence to show that he had paid all the mortgage payments, taxes and other payments for the rental property.

The respondent testified that his wife agreed that he could occupy the rental unit, but he said that she later changed her mind. The respondent said that he and his wife are divorcing and they are negotiating a division of assets through their lawyers. He said that the ownership of the rental property is still being negotiated. Despite the uncertainty about the respondent's right to occupy the rental unit, he took the position that he should have an order for possession because the tenants did not apply to dispute the Notice to End Tenancy within the time provided by the *Residential Tenancy Act* and because the tenants did not serve their application within the time provided by the Act.

Analysis and Conclusion

The tenants did not apply to dispute the Notice to End Tenancy within the time provided by the *Residential Tenancy Act*, but the evidence provided by the tenants and confirmed at the hearing by the respondent B.W., established that the respondent currently does not have the authority to end the tenancy for landlord's use. The respondents are in the process of negotiating through legal counsel the ownership and occupancy rights to the rental property. If B.W. had oral consent from the joint owner to occupy the property, according to his testimony that consent has been withdrawn. I find that the Notice to End Tenancy given by the respondent is therefore void and of no effect and I order that the Notice be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

The respondent is at liberty to give the tenants another two month Notice to End Tenancy for landlord's use, but he should only do so with the agreement of the other

respondent, or after he has written confirmation that he has authority to act as landlord and to occupy the rental property.

Because the tenants failed to comply with the filing and service provisions of the *Residential Tenancy Act* I decline to award a filing fee for this application.

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: June 13, 2013

Residential Tenancy Branch

