



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on February 28, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated February 6, 2014?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would commence on December 1, 2013 and end on December 1, 2014. The

rent was \$2000 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1000 and a pet damage deposit of \$300 at the start of the tenancy.

Analysis

Grounds for Termination

The Notice to End Tenancy relies on section 49 which provides that “The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member (father, mother, or child) or the landlord or the landlord’s spouse.

Policy Guideline #30 includes the following provision:

Ending a Fixed Term Tenancy

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.

Analysis

I determined the landlord does not have the legal right to end the tenancy during the fixed term. As a result I ordered that the Notice to End Tenancy dated February 6, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties

remaining unchanged. As the tenant's application has been successful I ordered that the landlord pay to the tenant the sum of \$50 for reimbursement of the cost of the filing fee.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: March 12, 2014

Residential Tenancy Branch

