



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MATT HOUSE PH HOLDING COMPANY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNL, FF

Introduction

This hearing dealt with an application by the tenant filed February 21, 2014 to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated February 15, 2014, with an effective date of April 30, 2014. The tenant further seeks recovery of the filing fee in this matter.

I accept the tenant's evidence that despite the landlord's agent having been personally served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. As a result, the tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End tenancy valid?
Should the Notice to End dated be set aside?
Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant submitted a copy of the 2 Month Notice to End. The landlord did not advance or provide any document evidence to this matter. The Notice to End was issued by the agent of the landlord.

The tenant provided a copy of their fixed term tenancy agreement. The tenant disputes the Notice to End on the basis the Notice to End was not validly issued in accordance with the provisions of the Act in light of the parties' *fixed term tenancy agreement* with an effective end date no sooner than August 31, 2014.

Analysis

Section 49(2) of the Act states, in relevant part as follows:

Landlord's notice: landlord's use of property

(2) Subject to section 51 *[tenant's compensation: section 49 notice]*, a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I find that the Act operates to invalidate a 2 Month Notice to End for Landlord's Use if the effective date is not the effective end date of the fixed term tenancy agreement. As a result, I find the landlord's Notice of this matter is null and of no effect. The Notice to End dated February 15, 2014, with an effective date of April 30, 2014 **is cancelled** and the tenancy continues in accordance with the Act. The tenant is entitled to recover the filing fee for this application.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**.

I Order the tenant may deduct **\$50.00** from a future rent in satisfaction of the filing fee.

This Decision is final and binding on both parties.

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 15, 2014

Residential Tenancy Branch