



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dawson Creek Native Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNC, CNL, O

Introduction

On July 14, 2014 the Tenant filed an Application for Dispute Resolution in which she applied for "other". The Tenant stated that this Application for Dispute Resolution and the Notice of Hearing were delivered to the Landlord's office on July 18, 2014. The Landlord acknowledged receiving these documents on that date.

On August 11, 2014 the Tenant amended this Application for Dispute Resolution to include an application to set aside a Notice to End Tenancy for Cause and to set aside a Notice to End Tenancy for Landlord's Use of Property. At the hearing the Tenant stated that she did not intend to apply to set aside a Notice to End Tenancy for Cause, and that claim has been set aside.

The Tenant stated that the amended Application for Dispute Resolution was delivered to the Landlord's office on an unknown date by her legal counsel. The Landlord acknowledged receiving the amended Application on August 29, 2014.

On August 29, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were served to the Landlord with the amended Application for Dispute Resolution. The Landlord acknowledged receiving these documents on August 29, 2014 and they were accepted as evidence for these proceedings.

On September 04, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were posted on the door of the rental unit on August 29, 2014. The Tenant acknowledged receiving these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should a Notice to End Tenancy for Landlord's Use of Property, served pursuant to section 49 of the *Residential Tenancy Act (Act)*, be set aside and is there a need to issue an Order requiring the Landlord to give the Tenant a copy of the file relating to her tenancy?

Background and Evidence

The Landlord and the Tenant agree that this has been a long term tenancy.

The Landlord and the Tenant agree that a Two Month Notice to End Tenancy for Landlord's Use of Property was posted on the door of the rental unit on July 18, 2014. The Tenant stated that she located this Notice to End Tenancy on her door on July 18, 2014.

The Two Month Notice to End Tenancy declares that the rental unit must be vacated by September 30, 2014. The Notice also declares that if the Tenant does not dispute the Notice within fifteen days of receiving it, the Tenant is presumed to accept that the tenancy is ending and that the Tenant must move out by the date set out on the first page of the Notice.

The Tenant stated that based on the information provided to her by her legal counsel and staff at the Residential Tenancy Branch, she understood she had disputed the Notice to End Tenancy on time. She stated that she first made contact with legal counsel regarding this matter on July 21, 2014 and she met with him 5-6 days later.

The Tenant stated that she is seeking a copy of the Landlord's file regarding her tenancy. The Agent for the Landlord stated that the Tenant and her lawyer can view the file by simply making an appointment and that the Tenant failed to attend an appointment scheduled for August of 2014, at which time she could have viewed the file. The Tenant stated that she did not attend the appointment in August because she believed the sole purpose of that meeting was to renew the lease, which she understood the Landlord did not want to do, and she did not understand it was an opportunity to view her file.

Analysis

On the basis of the undisputed evidence, I find that on July 18, 2014 the Tenant received a Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, which declared the Tenant must vacate the rental unit by September 30, 2014.

Section 49(9) of the *Act* stipulates that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 49 of the *Act* and that tenant must vacate the rental unit by that date unless the tenant disputes the notice within fifteen days of receiving it.

I find that the Tenant disputed the Two Month Notice to End Tenancy when she amended this Application for Dispute Resolution on August 11, 2014 to include a claim to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property. As she did not dispute this Notice until more than 15 days after she received the Notice, I find that the Tenant is conclusively presumed to have accepted that the tenancy is ending on September 30, 2014, pursuant to section 49(9) of the *Act*. I therefore dismiss the Tenant's application to set aside this Notice to End Tenancy.

I note that the Tenant's Application for Dispute Resolution did not include an application for more time to apply to set aside a Notice to End Tenancy, pursuant to section 66(1) of the *Act*, and that matter has, therefore, not been considered.

At the hearing the Agent for the Landlord requested possession of the rental unit, although she stated that Landlord is willing to extend the date of possession until October 31, 2014.

I have authority to order one party to comply with its obligations under the *Act* or their tenancy agreement. No evidence was submitted that shows the tenancy agreement reached by these parties requires the Landlord to provide the Tenant with a copy of a file that has been created by the Landlord. Similarly, I am aware of nothing in the *Act* that obligates the Landlord to do so. I therefore find that I do not have authority to order the Landlord to provide the Tenant with a copy of this file.

As the Landlord has expressed a willingness to allow the Tenant to view this file, I find that I do not have to intervene in that matter.

Conclusion

As I have dismissed the Tenant's application to set aside the Two Month Notice to End Tenancy, I grant the Landlord an Order of Possession, as requested at the hearing, which will be effective on October 31, 2014.

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: September 18, 2014

