



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, FF, MT

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order canceling a Notice to End Tenancy given for a Landlord's use of rental property.

The Tenant, R.K., appeared on his own behalf. The tenant, P.J., also attended the hearing although she did not participate. The Landlord did not attend.

The hearing process was explained and the Tenant provided affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

As the Landlord did not attend, service of the Tenant's Application for Dispute Resolution, filed August 21, 2014, and Notice of Hearing and supporting evidence (collectively referred to as the "Application Materials") was considered.

The Tenant testified that he personally served the Application Materials on the Landlord on August 28, 2014 at the rental unit. He testified that when served the Landlord became upset and stated that she would lose the sale of her home if the Tenants did not move out. She provided the Tenants with the required one month's rent, such that they did not pay rent for August 2014.

Background and Evidence

The Tenant testified that a month to month tenancy began October 2013 between himself, P.J. and the Landlord's former spouse, I.W. Rent was payable in the amount of \$950.00 per month.

A security deposit of \$475.00 was paid. I.W. and the Landlord separated and pursuant to their separation, the Landlord became the owner of the rental unit in June 2014. The Tenant then paid rent to the Landlord for July 2014.

In approximately November 2014, I.W. listed the property, in which the rental unit was located, for sale.

On June 13, 2014 the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"). It is not clear, based on the Tenant's testimony, when this was served on the Tenant. At the same time the Landlord served the 2 Month Notice, she told the Tenant she intended to reside in the property.

The Tenant testified that at no time did the Landlord tell him that the property had in fact sold. Rather, the first he became aware of the sale was when he saw a "Sold" sign outside the rental unit in August of 2014. The Tenant then telephoned the realtor, P.G., who confirmed the property had sold.

The Tenant filed the Tenant's Application for Dispute Resolution on August 21, 2014. In the Application the Tenant sought an Order allowing the tenant more time to make an application to cancel a Notice to End Tenancy, an Order canceling the 2 Month Notice and to recover the filing fee.

At the hearing, the Tenant also sought to recover double the monthly rent pursuant to section 51(2) of the Act as the rental unit was sold and not used by the Landlord for the stated purpose on the 2 Month Notice.

The Tenants moved out at the end of August 2014 to facilitate the sale of the rental unit. In moving from the rental unit, I find that the Tenants accepted the 2 Month Notice such that their application to cancel the 2 Month Notice was superfluous.

Analysis

The Tenant accepted the 2 Month Notice when he and P.J. moved from the rental unit as such it is not necessary to consider the merits of his application to cancel the 2 Month Notice.

While the Tenant made an oral request for compensation pursuant to section 51(2), he did not indicate this request on the Application Materials. As such, the Landlord was not given notice of this request.

Permitting the Applicant Tenant to request relief which was not contained in the Application Materials would be procedurally unfair to the Landlord. The principles of natural justice mandate that parties have a right to a fair hearing. The right to a fair hearing requires that parties should not be penalized by decisions affecting them unless they have been given prior

notice of the case against them, a fair opportunity to answer the case against them, and the opportunity to present their own case.

In this case, the Landlord was not informed that the Tenant would be seeking compensation pursuant to section 51(2). Additionally, as the Tenants moved out at the end of August 2014, the Tenant's Application to cancel the 2 Month Notice became unnecessary. While the Landlord did not attend the hearing, it is possible they declined to participate as they did not believe the Tenant would pursue the application, as they had accepted the end of the tenancy by moving from the rental unit at the end of August 2014.

The Tenant provided evidence that the rental unit had sold and that the Landlord's stated use for the property was inaccurate. Such evidence may support a finding for compensation under section 51(2). However, that is not for me to decide as the Landlord has not been afforded the opportunity to answer to that request. Accordingly, I dismiss the Tenants' application with leave to reapply on this issue.

Conclusion

The Tenants accepted the 2 Month Notice when they moved from the rental unit at the end of August 2014. It is therefore unnecessary to consider the Tenant's application to cancel the 2 Month Notice. The Tenants did not give the Landlord notice of their intention to seek compensation pursuant to section 51(2); and that application is dismissed with leave to reapply.

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 23, 2014

Residential Tenancy Branch

