



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking to cancel a notice of eviction and to recover the filing fee for the Application.

Only the Tenant appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that he served the Landlord with the Notice of Hearing and his Application by registered mail, sent on July 7, 2014. The Landlord did not attend the hearing but submitted evidence for the hearing, although late under the rules of procedure. I find the Landlord has been duly served in accordance with the Act.

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.

Issue(s) to be Decided

Are the eviction letters sent by the Landlord valid to end the tenancy?

Background and Evidence

In the particulars of the Application, the Tenant states that the notice of eviction given to him by the Landlord was late and not written on the proper form. The Tenant provided a copy of a letter from the Landlord which is entitled, *Two Month Notice End of Rental Agreement* (the "Eviction Letter").

In the Eviction Letter the Landlord explains that they had given verbal notice to the Tenant in June and again by text message that the Landlord wanted to move into the rental unit.

As explained above, the Landlord did not appear at the hearing.

The Tenant also explained that the Agents for the Landlord are now refusing to accept rent and the Tenant is unable to contact the Landlord.

Analysis

Based on the above, the affirmed testimony and evidence, and on a balance of probabilities I find that the Landlord has not used the approved forms and therefore, the tenancy has not ended and the tenancy will continue until ended in accordance with the Act.

In British Columbia a tenancy may only end when done in accordance with the Act. Section 44 of the Act refers to other provisions in the Act that explain how a tenancy may end or how the Landlord or the Tenant may end the tenancy.

It appears in this situation that the Landlord wants to move back into the rental unit.

There are provisions in section 49 of the Act for the Landlord to end the tenancy for this purpose, although under section 49(7) the notice given by the Landlord must comply with section 52 of the Act.

Section 52 requires that when the Landlord gives such a notice to the Tenant it must be in the **approved form**.

The approved form explains the rights and obligations of both parties under the Act. For example, the approved form explains the Landlord must provide the Tenant with the equivalent of one month of free rent when giving a two month Notice to End Tenancy for the Landlord's use of the rental unit.

I find the Eviction Letter is not in the approved form. Therefore, it is not valid to end the tenancy.

It appears the Landlord is aware of some of the approved forms, as one was used to provide proof of service of the Eviction Letter. The Landlord may seek further information from the branch on the correct approved form to use if they desire a tenancy to end.

I also note that the parties are unable to agree to avoid the Act or contract outside of the Act, under section 5.

The Landlord should also seek information on the correct dates required to issue an effective Notice to End Tenancy, as the Act calculates notice periods according to the day in the month that rent is due.

For example, in this case the rent is due on the first day of the month. Consequently if the Landlord wanted to end the tenancy on August 31, the latest they could have given the Tenant a Notice to End Tenancy using the **approved form** would have been June

30, provided the Tenant was duly served in person on June 30. (Service in person means the document is physically handed to the person being served.) If the Landlord was serving the Tenant by registered mail, it could not be sent any later than June 23, in order to be deemed served five days later and still be within the correct month.

Lastly, the Tenant testified that the Landlord and the Agents for the Landlord are refusing to accept rent from the Tenant. I note that the Landlord is not able to refuse to accept rent from the Tenant and then issue a Notice to End Tenancy for unpaid rent.

Conclusion

The Application of the Tenant is allowed. I find the Eviction Letter is not in the approved form and is not valid to end the tenancy.

This tenancy will continue until ended in accordance with the Act.

Both parties are advised they may seek further information from the branch on how a tenancy might end.

As the Tenant has been successful in this Application, I allow him to recover the filing fee for the Application in the amount of **\$50.00**, by reducing the rent by \$50.00 for one month.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 08, 2014

Residential Tenancy Branch

