



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR

Introduction

This hearing dealt with a tenant's application to cancel a Notice to End Tenancy for Cause and a Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Did the landlord issue valid and enforceable Notices to End Tenancy?
2. Should the Notices to End Tenancy be upheld or cancelled?

Background and Evidence

The tenancy commenced June 1, 2013 and the tenant is required to pay rent of \$750.00 on the 1st day of every month. The parties provided undisputed evidence that rent for September 2014 was paid on September 2, 2014.

The tenant received two Notices to End Tenancy on September 1, 2014 indicating the landlord wished to end the tenancy for cause and for unpaid rent that was due on September 1, 2014. The Notices used by the landlord were 4-page Notices to End Tenancy published by the Residential Tenancy Office in 1998 and the Notices refer to sections of the Act that no longer correspond to sections of the current Act. I was provided only some of the pages of the 4-page notices and it is uncertain if the tenant was served with all four pages for each Notice. The landlord explained that he is new to property management and inherited the forms he used from the previous manager.

During the hearing, I informed the parties that the Notices to End tenancy were cancelled due to the form and content of the Notices, as explained in the section below, and that it was unnecessary to hear the reasons for the issuance of the Notices.

Analysis

Section 52 of the Act provides for the form and content of a notice to end tenancy. Where a landlord wishes to end a tenancy, the landlord must serve the tenant with a Notice to End

Tenancy in the approved form. The Notices to End Tenancy issued by the landlord on September 1, 2014 are not in the approved form.

Section 10(2) of the Act does permit deviations from the approved form so long as:

“Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.”

Since the Notices to End Tenancy issued on September 1, 2014 refer to sections of the Act that do not correspond to the current versions of the Act, I find the content of the old forms used by the landlord does affect the substance of the form. Therefore, I find the Notices to End Tenancy served upon the tenant are not a valid or effective means to end this tenancy and I cancel them.

Having cancelled the Notices to End Tenancy the tenancy shall continue at this time. The landlord remains at liberty to issue a Notice to End tenancy for Cause in the approved form. The landlord may obtain approved forms from the Branch’s website at:
www.gov.bc.ca/landlordtenant

Since rent for September 2014 has been paid the right to issue another Notice to End Tenancy for unpaid rent is now moot. However, for future reference, a landlord may not serve a 10 Day Notice to End Tenancy for Unpaid rent unit until the day after the rent is due. In this case, serving a Notice to End tenancy for Unpaid Rent on September 1, 2014 was pre-mature as rent was not yet late and the earliest date the landlord could have served a 10 Day Notice was on September 2, 2014.

Conclusion

The Notices to end tenancy issue don September 1, 2014 were not valid Notices and they have been cancelled with the effect that the tenancy continues at this time.

As it was not necessary to hear the reasons for the issuance of the Notice to end tenancy for Cause, the landlord remains at liberty to issue a 1 Month Notice to End Tenancy for Cause in the approved form.

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: October 28, 2014

Residential Tenancy Branch

