



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a 1 Month Notice to End Tenancy for Cause. The tenants testified that they sent the application for dispute resolution and notice of hearing to both respondents by registered mail. When they checked the Canada Post web site last month the record showed that both respondents had received the documents. The respondents did not appear at the hearing nor did they submit any written evidence in advance of the hearing.

Issue(s) to be Decided

Should the tenants application be granted?

Background and Evidence

This month-to-month tenancy commenced September 4, 2012. The monthly rent, which is currently \$810.00, is due on the first day of the month.

On July 30, 2014, the tenants received a 1 Month Notice to End Tenancy for Cause. The effective date of the notice was August 31, 2014. The tenants filed this application for dispute resolution on August 5, 2014, well within the time limit for doing so.

The tenants paid the August rent and September rent by direct deposit. They did not receive a receipt or any other document indicating that the September rent was being accepted for use and occupation only.

Analysis

On an application such as this the onus is on the landlord to prove, on a balance of probabilities, that it has grounds within the meaning of the legislation to end the tenancy. By not appearing at the hearing or submitting any evidence the landlord has not met its' burden of proof.

Secondly, where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy.

The landlord accepted the September rent without making it clear that they were not reinstating the tenancy by doing so.

Accordingly, the 1 Month Notice to End Tenancy for Cause dated July 30, 2014 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

Conclusion

The 1 Month Notice to End Tenancy for Cause dated July 30, 2014 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

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 01, 2014

Residential Tenancy Branch

