



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This is an application filed by the tenant for an order cancelling the notice to end tenancy issued for landlord's use, a monetary order for money owed or compensation, an order for the landlord to comply with the Act, Regulations or tenancy agreement and recovery of the filing fee.

The tenant attended the hearing by conference call and gave undisputed testimony. The landlord did not attend or submit any documentary evidence. The tenant states that the landlord was served with the notice of hearing package by Canada Post Registered Mail on September 23, 2014 and has provided a copy of the Customer Receipt Tracking number as confirmation. The tenant has also submitted a copy of a online search of the Canada Post website that shows that the package was accepted on September 23, 2014 and went out for attempted service on September 25, 2014 in which a notice card was left for the landlord to pick up the package. I find that the tenant has properly served the landlord with the notice of hearing package and the submitted documentary evidence. The landlord is deemed to have been properly served.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on March 1, 2014 on a fixed term tenancy ending on March 1, 2015 as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,300.00 payable on the 1st of each month and a security deposit of \$500.00 was paid on March 1, 2014.

The tenant states that they were served with a 2 month notice to end tenancy issued for landlords use dated September 6, 2014 with an effective end of tenancy date of November 8, 2014. The notice displays a reason of, "The rental will be occupied by the landlord or the landlords spouse or a close family member(father, mother, or child) of the landlord or the landlords spouse."

The tenant states that they have not vacated the rental unit because they believe the landlord is providing false information so that he can re-rent the unit at a higher amount. The tenant has provided a copy of an online ad in Chinese and has provided an English translation.

The tenant also seeks a monetary order for \$2,600.00 as compensation for being served with the 2 month notice to end tenancy.

Analysis

I accept the undisputed evidence of the tenant and find that the tenant has established grounds that the landlord has fraudulently issued a notice to end tenancy for landlords use. The notice dated September 6, 2014 is set aside and the tenancy shall continue.

As for the monetary claim, the tenant's claim is for compensation for being fraudulently served with the 2 month notice. Compensation under this section of the Act is if the tenant complies with the notice and vacates the rental unit. If this occurs and the tenant discovers that the notice was issued fraudulently, the tenant then may apply for dispute resolution for compensation and if granted, an amount equal to 2 months rent. As such, the tenant has failed to establish a monetary claim as the tenant still resides at the rental property and has not vacated.

The tenant is also entitled to recovery of the \$50.00 filing fee. The tenant is granted a monetary order for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application to cancel the notice to end tenancy dated September 6, 2014 is granted. The tenancy shall continue.

The tenant is granted a monetary order for \$50.00.

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: November 06, 2014

Residential Tenancy Branch

