



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ladysmith + District Credit Union
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL, FF

This hearing was set to hear an application by the tenant for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use and granting him more time in which to make the application. Although served with the Application for Dispute Resolution and Notice of Hearing by personal service the landlord did not appear.

At the beginning of the hearing the tenant advised that he had moved out of the rental unit before the end of October and he had not been required to pay any rent for October. When I suggested to the tenant that his application was now moot he still wanted to talk about the validity of the notice to end tenancy.

The tenant told me he had lived in this rental unit since July 2002. On May 29, 2014, the landlord issued and served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on the ground that the landlord had all the necessary permits and approvals required by law to convert the rental unit to a non-residential unit. The effective date of that notice was July 31, 2014.

The tenant filed an application disputing the notice and a hearing was held on August 8, 2014. According to the Decision the parties came to an agreement at that hearing that the tenant would vacate the rental unit by September 30 and an order of possession for that date would be given to the landlord. The parties also agreed that if the tenant moved by the end of August there would be additional financial compensation paid to the tenant by the landlord.

The tenant made the following points about that hearing:

- The fact that the landlord did not obtain the necessary permits until after the tenant had been served with the Notice to End Tenancy was discussed.
- He had not seen a lawyer prior to the hearing and no one suggested he should.
- He felt pressured to enter into an agreement.
- The correspondence from his doctor stating that he should not move until the end of October was not adequately considered.

It was only after he received the Decision that he sought legal advice. The advice was that the 2 Month Notice to End Tenancy for Landlord's Use was invalid. He did not apply for a review of the Decision or take any other steps to have it set aside. The tenant said that was because the time for doing so had expired. Instead he filed this application for dispute resolution on September 17 challenging the validity of the same Notice to End Tenancy.

I advised the tenant that:

- As he had moved this application was moot.
- When an issue has already been heard and resolved in a hearing a subsequent arbitrator cannot make a ruling on the same issue.
- Even if the arbitrator had set aside the Notice to End Tenancy in the August hearing the landlord could simply serve the tenant with a new notice. The effective date of a 2 Month Notice to End Tenancy for Landlord's Use served before the end of August would be October 31, 2014.
- Although he may not have been happy with the route taken he had in fact achieved his objective – to stay in this rental unit until the end of October.

The tenant's application is dismissed without leave to re-apply.

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

