



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for the recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord or his family member intend, in good faith, to move into the rental unit?

Background and Evidence

The tenancy started on June 01, 2013. The rent is \$1,400.00 per month payable on the first of each month.

On December 27, 2014, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property to be effective on February 28, 2015. The notice was served by registered mail.

The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The tenant made this application on January 23, 2015 and stated that she received the notice on January 08, 2015.

Service of the hearing document, by the tenant to the landlord, was done in accordance with section 88 of the *Residential Tenancy Act*. Pursuant to this section, service of documents sent via registered mail is deemed received five days from the date they were mailed. Accordingly the tenant is deemed to have received the documents on January 02, 2015 and applied to dispute it 21 days after having received it.

The tenant stated that the landlord had put the house up for sale in October 2014 but did not find a buyer. The landlord testified that since the market was down, he decided not to sell. The landlord also stated that his son who is currently paying \$1,700.00 in rent wishes to move in and pay a lower rent.

The tenant pointed out that the landlord had failed to fill out his address and phone number on the notice to end tenancy. The landlord stated that he had in error omitted to do so by stating that the tenant regularly contacted him at his home address to pay rent and by telephone for other reasons. The tenant agreed that she has this information in her possession.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith.

The notice was served in the two page format which clearly notifies the tenant about the 15 day time frame within which to dispute the notice. Since the tenant is deemed to have received the notice on January 02, 2015, and applied to dispute the notice on January 23, 2015, I find that the tenant has not made application to dispute the notice within the legislated time frame.

Based on the sworn testimony of the landlord, I find that the landlord intends in good faith to occupy the rental unit for his personal use. Accordingly I find that even if the tenant had filed her application within the 15 day timeframe, the tenancy must end.

The tenant argued that the landlords had failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlords have met the good faith requirement of the legislation and intend to allow their son to move into the rental unit. Therefore, I find that the Notice to End Tenancy must be upheld and accordingly I dismiss the tenant's application.

Pursuant to section 49 of the *Residential Tenancy Act* a notice under this section must end the tenancy on a date that is not earlier than 2 months after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement.

In this case the tenant is deemed to have received the notice on January 02, 2015 and the earliest effective date permitted under the applicable section is April 01, 2015.

Accordingly the notice is upheld and the tenancy will end on or before April 01, 2015.

Conclusion

The Notice to End Tenancy is upheld. The tenant must bear the cost of filing this application.

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: February 17, 2015

Residential Tenancy Branch

