



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This is an application filed by the tenant to obtain an order to cancel a notice to end tenancy issued for landlord's use and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The landlord, P.K attended and confirmed that she was also a landlord even though she was not named in the application for dispute. The tenant confirmed the landlord's testimony and did not object to the landlord, P.K. appearing to respond to the dispute. Both parties also confirmed the submission of the tenant's documentary evidence and that the landlord did not submit any documentary evidence.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on September 1, 2014 on a fixed term tenancy ending on August 31, 2015 as shown by the submitted copy of the signed tenancy agreement dated August 26, 2014. The monthly rent is \$975.00 payable on the 1st of each month and a security deposit of \$500.00 was paid.

The tenant states that he was not served with a notice to end tenancy issued for landlord's use, but instead agreed to end the fixed term tenancy to accommodate the landlord having family move into the rental unit. The tenant states that he should be entitled to compensation equal to 1 months rent as per the Act in Section 51 following service of a notice pursuant to Section 49.

The tenant states that he signed a mutual agreement to end the tenancy dated December 1, 2014 to end the tenancy on February 28, 2015. The tenant states that he was unaware of what he was signing.

Analysis

It was confirmed with both parties that a 2 month notice to end tenancy issued for landlord's use was not issued or served upon the tenant. As such, no order to cancel a notice to end tenancy can be issued. As such, the tenant's application is dismissed.

Section 30 of the Residential Tenancy Branch Policy Guidelines state,

Ending a Fixed Term Tenancy

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For example, during the fixed term a landlord may end the tenancy if the tenant fails to pay the rent when due. A proper Notice to End Tenancy must be served on the tenant. During the fixed term a tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (the Legislation). Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

A landlord cannot give notice for owner occupancy or purchaser occupancy that will have the effect of ending a fixed term tenancy before the end of the fixed term. If a landlord wishes to end the tenancy for reasons such as owner occupancy or purchaser occupancy, the landlord must serve a proper Notice to End Tenancy on the tenant. Proper notice in respect of purchaser occupancy includes the pre-requisites to issuance of the Notice to End: any conditions precedent removed from the sales agreement and the purchaser intends in good faith to occupy the rental unit and requests the vendor in writing to issue the Notice to End. The effective date of that Notice will be two months from the end of the month in which the Notice was served but in any case not before the end of the fixed term. The tenant may **not**, during the fixed term, give the landlord a minimum 10 day notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice.

If was confirmed with both parties that a mutual agreement to end the tenancy was signed by both parties on December 1, 2014 to end the tenancy on February 28, 2015.

Conclusion

The tenant's application is dismissed.

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 19, 2015

