



Dispute Resolution Services

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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.

The hearing was conducted via teleconference and was attended by the tenant.

The tenant provided documentary evidence to confirm the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on February 26, 2015 in accordance with Section 89. The tenant testified that according to Canada Post tracking information the landlord received the package on March 3, 2015.

Based on the evidence and testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

The tenant clarified at the outset of the hearing that he does not have any evidence to dispute that the landlord intends to move into the rental unit when the tenancy ends and as such he is not disputing the validity of the 2 Month Notice to End Tenancy for Landlord's Use of Property. Rather he is disputing the effective date of the notice only.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to change the effective date of a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 53, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on August 28, 2014 for a 1 year and 1 day fixed term tenancy beginning on September 1, 2014 for the

monthly rent of \$1,000.00 due on the 31st of each month with a security deposit of \$500.00 paid; and

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on February 24, 2015 with an effective vacancy date of May 1, 2015 citing the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or their spouse.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a written notice that would be effective no earlier than 2 months after the date the notice is received and if the tenancy agreement is a fixed term tenancy agreement not earlier than the date specified as the end of the tenancy if:

- a. The landlord or a close family member of the landlord intends in good faith to occupy the rental unit;
- b. The landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy if the purchaser or a close family member of the purchaser intends in good faith to occupy the rental unit;
- c. The landlord has all the necessary permits and approvals required by law, and intends in good faith, to:
 - i. Demolish the rental unit;
 - ii. Renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - iii. Convert the residential property to strata lots under the Strata Property Act;
 - iv. Convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
 - v. Convert the rental unit for use by a caretaker, manager or superintendent of the residential property; or
 - vi. Convert the rental unit to a non-residential use.

As the tenant does not dispute the validity of the Notice, I find the landlord has issued a 2 Month Notice to End Tenancy for Landlord's Use of Property that is valid and effective. However, I note that since the tenancy agreement is for a fixed term tenancy ending on September 1, 2015 the effective date of the Notice given as May 1, 2015 is not compliant with the requirements under Section 49.

Section 53 of the *Act* states that if a landlord or tenant gives a notice to end a tenancy on a date that does not comply with the requirements under the relevant Section of the *Act*, the effective date of the Notice is deemed to be changed to the earliest date that complies with the relevant Section.

As such, pursuant to Section 53 I find the effective date of this Notice is deemed to be changed to September 1, 2015 and the tenant must vacate the rental unit by this date. I note that as I have found this Notice to be valid and effective the landlord is required to provide compensation to the tenant, pursuant to Section 51 of the *Act*, before the effective date of the Notice, in an amount equivalent the amount of rent as agreed upon in the tenancy agreement.

I also note that should the landlord fail to use the rental unit for the stated purpose for a reasonable time after the effective date of the Notice the tenant may be entitled to additional compensation in an amount equivalent to 2 month's rent, pursuant to Section 51.

Conclusion

I order the tenant is entitled to recover, from the landlord the \$50.00 fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment in full satisfaction of this claim, pursuant to Section 72(2)(a).

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: March 26, 2015

Residential Tenancy Branch

