



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, LRE, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants, filed under the Residential Tenancy Act, (the “Act”), to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”), for a monetary order for money owed or compensation for damage or loss under the Act, to have the landlord comply with the Act, regulations or tenancy agreement, to suspend or set conditions of the landlord’s right to enter the rental unit and recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants have indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants request to set aside the Notice to End Tenancy. The balance of the tenants’ application is dismissed, with leave to reapply.

In a case where the tenants have applied to cancel a Notice, the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the Notice was issued for the reason given on the Notice.

Issue to be Decided

Should the Notice issued on March 27, 2015, be cancelled?

Background and Evidence

The tenancy began December 30, 2014. Rent in the amount of \$1,800.00 was payable on the first of each month. The tenants paid a security deposit of \$900.00.

The parties agreed that the tenants were served with the Notice, with an effective vacancy date of May 31, 2015.

The reason stated in the Notice was,

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or landlord's spouse.

The landlord testified that the owners of the premise where they are currently living had to move to another province and they agreed that they would reside in their home until their return, which was originally thought to be September 2015. The landlord stated however, the owners have decided to return earlier and will be moving back into their home in May 2015. The landlord stated as a result of this, they will have to move back into their own home, where the tenants are currently living.

Filed in evidence is an email dated February 17, 2015, to the landlord from the homeowners where the landlord is currently living. The email confirms that the homeowners are returning on May 15, 2015.

The tenants testified that they do not dispute that the landlord intends to move back into the rental unit. The tenants stated that the parties entered into a verbal fixed term agreement with an effective vacancy date of October 31, 2015, and therefore, the landlord cannot end the tenancy earlier than the agreed upon date.

The landlord argued that no written tenancy agreement was signed and there was never a promise of a fixed term agreement. The landlord stated that although they were expecting the owners of the home where they are currently living to be gone until September 2015, there was no guarantee that they would not return earlier.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants indicated that there was a verbal fixed term tenancy agreement with a vacancy date of October 31, 2015. The landlord denied entering into any fixed term agreement with the tenants.

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and expire on a specific date. The agreement must state the date the tenancy ends.

Although there may have been discussion that the landlord would live in the other home until September 2015, as that was their expectation at the time. There is no evidence that the parties entered into a fixed term tenancy agreement as defined in the Act, as there is no written tenancy agreement which states the date the tenancy must end. I find in the absent of any such written agreement that the tenancy is a month-to-month tenancy.

As I found this was not a fixed term agreement as defined in the Act, the landlord was entitled to give notice to end the tenancy under Section 49 of the Act, by giving notice to end the tenancy on a date not earlier than 2 months after the date the tenants receive notice for a specific reason.

When the tenants filed to cancel the Notice, the onus lied on the landlord to prove the landlord truly intends to use the premises for the purpose stated in the Notice. The tenants did not dispute that the landlord intends to use the premises for the reason stated in the Notice. Therefore, I find the Notice issued on March 27, 2015, is a valid notice under the Act. I find the tenancy legally ends on the effective vacancy date of May 31, 2015.

In light of the above, the tenants' application to cancel the 2 Month Notice to End Tenancy Issued on March 27, 2015, is dismissed. As the tenants were not successful with their application they are not entitled to recover the filing fee from the landlord.

Conclusion

The tenants' application to cancel the 2 Month Notice to End Tenancy Issued on March 27, 2015, is dismissed. The tenancy will legally ended on May 31, 2015, in accordance with the Act.

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: April 27, 2015

Residential Tenancy Branch

