



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MT

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied for an extension of time to cancel a 2 Month Notice to End Tenancy for Landlord's Use and to cancel the Notice.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on February 25, 2015 be cancelled?

Is the tenant entitled to an extension of time to apply to cancel the Notice ending tenancy?

Mutually Settled Agreement

The tenant submitted a copy of the tenancy agreement. The current tenancy commenced on August 1, 2014 for a fixed term to July 31, 2015 at which point the tenancy converts to a month-to-month term. Rent is \$1,400.00 per month.

On February 25, 2015 the landlord issued a 1 month Notice to end tenancy for landlord's use of the property. The reason given for ending the tenancy is that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires vacant possession.

The tenant confirmed that she received the Notice to end tenancy on February 25, 2015 and applied to dispute the Notice on March 16, 2015. The tenant said that as the Notice ended the tenancy before the last day of the fixed term the Notice was not valid.

The tenant said she was feeling pressured to vacate the unit. She explained she has already moved once to accommodate renovations and would prefer to remain the current unit. When the possibility of a mutual agreement was raised the tenant decided that she would prefer to enter into an agreement with the landlord.

During the hearing the parties reached a mutually settled agreement with the following terms:

- The tenant will vacate the rental unit by May 23, 2015;
- The landlord will provide the tenant with \$500.00 compensation effective May 23, 2015;
- The current tenancy will be properly ended, with the security deposit returned to the tenant;
- The parties will immediately enter into a new tenancy agreement for unit 1705 in the same building;
- The tenancy agreement for unit 1705 will have the same terms as the current tenancy agreement, it will be a fixed term ending July 31, 2015 converting to a month-to-month term effective August 1, 2015; rent will be \$1,400.00 per month; and
- The tenant will pay a security deposit for the new tenancy.

The parties agreed that they may sign a mutual agreement ending the current tenancy on a different date; which will result in the new tenancy commencing immediately after that date.

Section 62(3) of the Act provides:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies

Therefore, in support of the mutually settled agreement, pursuant to section 62(3) of the Act I find and Order:

- That this tenancy will end effective May 23, 2015 or on another date mutually agreed to in writing by the parties;
- That the day this tenancy ends a tenancy will commence between the parties in the same building, in unit 1705;
- That the tenancy for unit 1705 will include the same terms as the current tenancy agreement: rent will be \$1,400.00 per month, it will include a fixed term to July 31, 2015 and on August 1, 2015 the term will convert to a month-to-month term; and

- That the landlord is to pay the tenant \$500.00 compensation upon the termination of the current tenancy. This sum may be deducted from rent due to the landlord.

I note that the landlord has attempted to end the current fixed term tenancy agreement prior to the last day of a fixed term. A fixed term tenancy may not be ended by issuing a 2 month Notice to end tenancy for landlord's use with an effective date that is earlier than the fixed term. This is based on section 49(2) of the Act, which provides:

(6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

In this case the section 53 of the Act would alter the effective date to the earliest date that complies with the legislation. That date would have been July 31, 2015 if the landlord had proven the reason given on the Notice.

Conclusion

The tenancy will end and a new tenancy will commence as set out in the mutually settled agreement and Orders made.

The tenant is entitled to compensation in the sum of \$500.00 which may be deducted from rent owed.

This decision and mutually settled agreed is final and binding and 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 29, 2015

Residential Tenancy Branch

