



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnl, mndc, olc, erp, opl, mnr, ff

Introduction

The tenant seeks an order cancelling a one month Notice to End Tenancy. The landlord seeks an order of possession.

There are other numerous other issues raised in the applications of the parties. The tenant confirmed at the start of the hearing that the issue of the cancellation of the notice was the most important issue to be dealt with. I note that the other components in the tenants' claim are not related in law or fact to the issue of the ending of the tenancy and the disputed notice. The landlord's claim for an order of possession is related, but not the balance of the landlord's claim.

Rule 1.1 of the Rules of Procedure states that the objective of the Rules of Procedure is to ensure a fair, efficient and consistent process for resolving disputes. Rule 2.3 provides that claims made in the application must be related to each other, and that Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. In this case, the tenant and landlord have both applied for a number of unrelated matters. These included monetary claims by both parties. While these other claims may be important claims as well, they are not related matters to the foundational issue as to whether or not the tenancy would end, or whether the Notice to End Tenancy would be cancelled and the tenancy continue. I therefore ruled at the outset of the hearing that the hearing would deal only with the application to cancel the Notice and the application for an Order of Possession, and the remaining issues are all dismissed as unrelated, with liberty granted to reapply.

Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenant effective to end this tenancy, or should the Notice be cancelled, and the tenancy continue?
- Is the landlord entitled to an order of Possession?

Background and Evidence

This tenancy began on or about September 2004. A two month Notice to End Tenancy for landlord use was served upon the tenant February 27, 2015, effective to end the tenancy May 1, 2015.

The female landlord confirmed that her parents have sold their home and intend to move into the premises. The tenant testified that she has a fixed term tenancy ending December 31, 2015, and that any Notice could only be effective to end the tenancy to coincide with the end of the fixed term. The landlord submits the agreement was a month to month tenancy, but has been fraudulently amended by the tenant to now appear to be a fixed term tenancy.

At the conclusion of the tenancy, the tenant confirmed that she now intends to vacate the premises, as she has found alternative premises which are available to her at the beginning of May, 2015.

Analysis

Although her earlier testimony was to the contrary, I accept the tenant's final testimony that she is moving out in early May. As the tenant has given no written notice to end the tenancy, and as there is no mutual agreement to end the tenancy, it follows that the ending of the tenancy is a result of the landlord's notice. Accordingly the tenant's claim to cancel the notice is dismissed, as is the claim to recover the tenant's filing fee. The tenant remains entitled to the section 51 compensation from the landlord, equal to one month of rent.

The landlord applies for an order of possession. While the tenant has confirmed she will vacate, I also note that the landlord's evidence satisfies me that the notice was properly served, and that a close family member intends in good faith to occupy the premises. An Order of Possession is granted to the landlord effective May 1, 2015. As the landlord is successful, the landlord may recover their \$50.00 filing fee from the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an Order of Possession, effective May 1, 2015. The tenant must pay the landlord \$50.00, representing recovery of the landlord's filing fee.

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 08, 2015

Residential Tenancy Branch

