



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This was an application by a tenant to cancel a landlord use two month Notice to End the Tenancy dated April 9, 2015 with an effective date of June 30, 2015. Only the tenant attended the conference call hearing which lasted eighteen minutes.

Issue(s) to be Decided

Is the landlord entitled to an Order for possession or will the tenancy continue?

Background and Evidence

The tenant AT testified that she sent the Application by registered mail. With reference to Canada Post's Web Site I find that the landlord was served on May 1, 2015. The tenant admitted receiving the Notice on April 9, 2015.

The tenant AT testified that her tenancy agreement began on September 1, 2014 with a fixed term ending on August 31, 2015. She produced a copy of the agreement confirming the term. AT further testified that she had not agreed in writing to end the tenancy earlier and had advised the landlord in writing and verbally that she wished to remain in the tenancy until the end of her tenancy. The tenant requested that the Notice be cancelled.

Analysis

I am asked to decide whether the Notice should be set aside and the tenancy continue.. The Notice is given under section 49(3) of the Residential Tenancy Act, which states:

49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49 (2) (c) also states:

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (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.**
(my emphasis added)

It is the landlord who has the burden of proof on the balance of probabilities to establish cause. This onus must be satisfied strictly where the landlord seeks to end a tenancy. Here the landlord did not attend the hearing to give evidence and accordingly has not proven cause.

In addition I find that the tenant has proven that the tenancy is a fixed term tenancy ending on August 31, 2015, two months after the effective date stated on the Notice to End the Tenancy which is contrary to section 49 (2) (c) of the Act..

Accordingly I have allowed the tenant's application and have cancelled the Notice to End the Tenancy. The tenant shall recover her filing fee.

Conclusion

I have cancelled the Notice to End the Tenancy dated April 9, 2015 with an effective date of June 30, 2015. I Order that the tenancy continue. The tenant is entitled to recover her filing fee of \$ 50.00 for this application. I Order that the tenant be permitted to deduct \$ 50.00 from her next rental payment. This decision must be served on the landlord.

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: June 09, 2015

