



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing dealt with an application by the tenant to cancel a 2 Month Notice to End Tenancy For Landlord's Use (the Notice), dated September 05, 2015, and recover the filing fee.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided proof of registered mail service by way of the tracking number for the registered mail. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the Notice to End dated September 05, 2015 be cancelled?

Background and Evidence

It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence the Notice was validly issued for the stated reason(s) and they are sufficient.

The tenant provided a copy of the 2 Month Notice received by the tenant on September 05, 2015. The Notice does not indicate nor stipulate the reason the Notice is being given, however, the tenant was told it was because the landlord had sold the residential property. The tenant testified that they have a fixed term tenancy agreement which stipulates the term of the agreement is for a period to March 2015, and which the parties agreed and affirmed by their signatures and their initials that the tenancy would end no sooner than March 2016.

Analysis

The landlord did not attend the hearing to request an Order of Possession. Irrespective, the landlord's 2 Month Notice does not stipulate the reason for seeking an end to the tenancy, and as a result the notice is invalid.

In respect to the tenant's testimony, it must be noted that even if the Notice was completed in accordance with the Act, a landlord cannot end a tenancy under Section 49 of the Act, for landlord's use of property, if the tenancy agreement is for a fixed term and the 2 Month Notice is for a date earlier than the date specified on the agreement as the end of the tenancy.

I find no valid basis upon which the landlord's Notice can be upheld. Therefore, **I Order** the Notice to End dated September 05, 2015 **is cancelled**, or set aside. The tenant is entitled to recover their filing fee.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

I Order that the tenant may deduct **\$50.00** from a future rent in satisfaction of their 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: November 09, 2015

Residential Tenancy Branch

