



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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Introduction

This hearing was convened in response to an application by the tenant pursuant to Section 49(8) of the *Residential Tenancy Act* (the Act) to cancel a 2 Month Notice to End for Landlord's Use with a purported effective date of December 31, 2015.

Both named parties attended the hearing. The landlord was represented by their son. The tenant in attendance had benefit of an advocate. Both parties were given opportunity to present *relevant* evidence and *relevant* testimony in respect to the application and to make *relevant* prior evidentiary submissions to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged presenting all of the *relevant* evidence they wished to present.

At the outset of the hearing the landlord orally requested an Order of Possession effective no later than March 01, 2015 upon upholding the Notice or dismissing the tenant's application.

Issue(s) to be Decided

Is the landlord's 2 Month Notice to End valid?

Should the landlord's Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy started November 01, 2011. The hearing was not provided with a copy of the 2 Month Notice to End in this matter, or a copy of the tenancy agreement. None the less, the parties agreed the tenancy is occupied by 2 co-tenants embroiled in a marital dispute. The parties agreed the tenancy agreement is in respect to both tenants. The parties further agreed the tenant in attendance received a 2 Month Notice to End dated October 31, 2015 solely naming the tenant in attendance – given to the other tenant in accordance with Section 88 of the Act as *an adult apparently residing with the person*. The landlord testified the intent of the Notice is to end the tenancy solely for the attending tenant as the other tenant, along with the couple's young daughter, will remain in the unit and continue living with the landlord - and grandmother of the young child. The attending tenant claims the landlord's motive for ending their tenancy is interference with the already compromised marital relationship of the couple and is prejudicial to the attending tenant in respect to the couple's legal conflict. The landlord testified their stated purpose of personally occupying the rental unit is their honest intent based on practical and business reasons, and have no hidden motive. The attending tenant disputes the landlord's good faith intention – believing the landlord has another purpose than solely their stated purpose to occupy the rental unit. The tenant provided the couple is currently before the Supreme Court in respect to their daughter. During the hearing there was no evidence presented that the Supreme Court action is currently materially or substantially linked to possession of the living accommodation so as to affect my jurisdiction in this matter.

Analysis

I find that to be valid a Notice to End a tenancy must be in respect to all tenants: that is, it must name all tenants to a tenancy agreement – as a Notice to End is to end the tenancy and not the occupation of a selected tenant. In this matter, the Notice solely names the attending tenant and the landlord has confirmed they seek for only one of two tenants to the contractual agreement to be affected by their Notice. As a result, I find the landlord's Notice to End dated October 31, 2015 invalid and ineffective to end

the tenancy. The landlord's Notice to End dated October 31, 2015 is cancelled and of no effect. I make no finding in respect to the landlord's intent to accomplish the stated purpose of their Notice, or in respect to the claim of an ulterior motive on the landlord's part for ending the tenancy.

It remains available to the landlord to issue a *valid* Notice to End.

Conclusion

The tenant's application is granted. The landlord's 2 Month Notice to End dated October 31, 2015 is null and of no effect.

This Decision is final and binding on both parties.

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: January 13, 2016

Residential Tenancy Branch

