



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”), and to recover the filing fee from the Landlord.

The female Tenant appeared for the hearing and provided affirmed testimony. However, there was no appearance by the Landlord during the 15 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Tenant for this hearing.

The Tenant testified that she sent the Landlord a copy of the Application and the Notice of Hearing documents by registered mail on February 5, 2016. The Tenant provided the Canada Post tracking number into oral evidence (which is documented on the front page of this decision) to verify this method of service. The Tenant allowed me to check the tracking report for the documents and the Canada Post website indicates that these were signed for and received by the Landlord on February 20, 2016. Therefore, based on the undisputed evidence before me, I find the Tenant affected service on the Landlord pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The hearing continued with the Tenant’s undisputed evidence.

Preliminary Findings

The Tenant testified that the Landlord in this case is her mother who is also the owner of the rental unit. The Tenant explained that they took occupancy of the rental unit in August 2010 and this was a living arrangement made out of generosity rather than for business consideration. The Tenant testified that in June 2015, they received a letter from the Landlord’s lawyer stating that the living arrangement was to be changed to a formal tenancy for which the Tenants were required to pay rent.

The Tenant testified that they started to pay rent to the Landlord in the amount of \$500.00 on the first day of each month. No security deposit was paid but the Tenant

confirmed that the tenancy was an oral agreement on a month to month basis. The Tenant testified that they provide postdated cheques to the Landlord for this tenancy.

The Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Therefore, based on the foregoing and the undisputed oral evidence of the Tenant, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the Act and that this oral tenancy started on a month to month basis in June 2015.

The Tenants request to cancel the Notice. Therefore, I first turned my mind to make legal findings on the form and content of the Notice. Section 52 of the Act stipulates the particular requirements a Notice must conform to in order for it to be effective. In particular, Section 52(d) of the Act requires the Notice must state the grounds for ending the tenancy.

When the Tenant was asked why she had only provided the first page of the two-page Notice, the Tenant explained that she did not provide this because the second page had nothing written on it. The Tenant was asked to confirm that the Landlord had failed to tick of or clearly select a reason from the list provided on the Notice. The Tenant testified that she had taken the Notice to her lawyer who in turn had also advised that the Notice was of no effect as no reason had been elected by the Landlord.

Therefore, in the absence of the Landlord's appearance at this hearing to suggest otherwise, I am only able to conclude that the Landlord issued the Tenant with a Notice that did not comply with the Act. Therefore it is of no effect. As a result, I cancel the Notice issued by the Landlord dated January 29, 2016 and the tenancy will resume until it is ended in accordance with the Act.

As the Tenants have been successful in cancelling the Notice, I find that the Tenants are entitled to the \$100.00 filing fee for the cost of having to make this Application. The Tenants are authorized to obtain this relief by deducting \$50.00 from a future month's rent payment pursuant to section 72(2) (a) of the Act. The Tenant indicated that she will be making this deduction from her July 2016 rent as she has already provided the Landlord with postdated cheques up until this date. The Tenants should inform the

Landlord in writing of their intention to redeem this amount when making the reduced monthly rent payment.

Conclusion

The Landlord failed to appear for the hearing and prove the Notice. The Notice does not comply with the Act. Therefore, the Notice is cancelled. The Tenants may recover the filing fee from a future payment of rent.

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: March 17, 2016

Residential Tenancy Branch