



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, CNC, CNR, FF

Introduction

This was a hearing with respect to the tenant's application to cancel a Notice to End Tenancy for landlord's use. The tenant's application was filed on March 14, 2016. The tenant later submitted amendments to his original application. On April 1, 2016 he amended his application to dispute a one month Notice to End Tenancy for cause and he submitted a second amendment to dispute a 10 day Notice to End Tenancy for unpaid rent

Issue(s) to be Decided

Should any or all of the three Notices to End Tenancy be cancelled?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Port Moody. The tenancy began on August 28, 2015 for a six month term and thereafter on a month to month basis. Rent in the amount of \$1,200.00 is payable on the 28th day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy.

The landlord served the tenant with a two month Notice to End Tenancy dated January 6, 2016. The tenant applied to cancel the Notice and a hearing was conducted on February 25, 2016. The landlord failed to attend the hearing and the arbitrator who heard the matter allowed the tenant's application and cancelled the Notice.

Since the hearing on February 25th the landlord has served another two month Notice to End Tenancy for landlord's use. The landlord said the Notice was given because the co-owner of the rental property intends to move into the rental unit. The landlord also served the tenant with a one month Notice to End Tenancy for cause. The tenant said that he discovered the Notice almost two weeks after it was given to him because it was

not properly served to him, but was found hidden in between other documents delivered by the landlord. The landlord also served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The rent has been paid and the landlord said she has withdrawn the 10 day Notice.

The landlord provided evidence with respect to the grounds for the two month and the one month Notices to End Tenancy. The tenant disputed the grounds for the Notices. The tenant said at the hearing that he is planning to move from the rental unit. He testified that he has purchased a house to live in with his family. The sale does not complete until July and he will not have possession before July 31st. The tenant said that he does not want to have to move twice and wishes to remain in the rental unit until he has possession of his house and can move directly to his new residence.

At the hearing the landlord said that she is prepared to allow the tenant to remain in the rental unit until July 31st when he will be able to move to his new house. The tenant said that he would consent to the landlord receiving an order of possession effective July 31st. The tenant agreed that he will be responsible for paying rent including rent for July, but he requested that he be reimbursed for his filing fee for the application to dispute the landlord's Notices to End Tenancy.

The landlord submitted that the tenant was late in filing an application to dispute the one month Notice to End Tenancy and therefore he should not recover his filing fee.

Analysis

The landlord has agreed that the tenancy may continue until July 31, 2016 when the tenant will have possession of his own house. The tenant has agreed to the issuance of an order of possession effective July 31, 2016. The tenant has agreed to pay rent until the tenancy ends on July 31, 2016, but he has requested to be reimbursed for the filing fee for his application.

Pursuant to the agreement of the parties I order that each of the Notices to End Tenancy is cancelled and the tenancy will continue until July 31, 2016. I grant the landlord an order of possession effective July 31, 2016 after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that court.

If the tenancy was ended pursuant to the Notice to End Tenancy for landlord's use the landlord would be obliged to provide the tenant with one month's free rent pursuant to section 51 of the *Residential Tenancy Act*. The tenancy is not ending pursuant to the

Notice to End Tenancy, but rather pursuant to the agreement of the parties and the tenant is therefore obliged to pay rent until the end of the tenancy.

The landlord submitted that the tenant should not recover his filing fee because he did not apply to dispute the one month Notice to End Tenancy within the allowed time, but the tenant testified that he was not properly served because the Notice to End Tenancy was concealed amongst other papers. I find that the tenant was not properly served with the one month Notice to End Tenancy and he therefore cannot be considered to have been late in applying to dispute the Notice.

Because the landlord has not been granted an order of possession pursuant to any of the Notices, but rather by agreement, I find that the tenant should be entitled to recover the \$100.00 filing fee for this application. The tenant is entitled to deduct the sum of \$100.00 from a future installment of rent payable to the landlord.

Conclusion

The Notices to End Tenancy have been cancelled and the landlord has been granted an order of possession effective July 31, 2016 pursuant to the agreement of the 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: April 28, 2016

Residential Tenancy Branch