Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR CNC CNL OPC FF

Introduction

Both parties attended the hearing and confirmed that the Notices to End Tenancy were served personally and the tenant's Application by registered mail. I find the documents were legally served for the purposes of this hearing. There were 3 Notices to End Tenancy, a 10 day Notice dated March 1, 2016 for unpaid rent, a Two Month Notice for Landlord's Use of the Property dated March 1, 2016 and a One Month Notice to End Tenancy dated March 2, 2016 for the cause of repeated late payment of rent.
The tenant applies pursuant to the *Residential Tenancy Act* (the Act) to cancel the three notices to end tenancy.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent or they need the property for their own use or they have sufficient cause to end the tenancy?

Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in December 14, 2014 as a month to month tenancy, rent is $500 a month and there is no security deposit. The undisputed evidence is that the landlord served the 2 month Notice to End Tenancy dated March 1 *to be effective March 1, 2016* personally on the tenant on March 1, 2016. The tenant said she learned that she was entitled to a free month's rent pursuant to a section 49 Notice so she did not pay rent for March and the landlord immediately served a 10 Day Notice on her. She vacated on April 1, 2016 as she found a place on March 5, 2016.

The landlord said it was difficult for them as they had given the tenant 5 months verbal notice of their intention to reclaim the unit. They had a baby and needed space for help

from a relative and the baby. Included with the evidence are the 3 Notices to End Tenancy.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the Notice to End Tenancy for landlord's use of the property dated March 1, 2016 to be effective March 1, 2016 is automatically corrected. The effective date on the Notice is automatically corrected to May 30, 2016 pursuant to section 53 of the Residential Tenancy Act as a two month Notice to End Tenancy must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. I find the tenant vacated on April 1, 2016 and did not pay rent for March 2016. Section 51 of the Act provides that a tenant who receives a section 49 Notice to End Tenancy for landlord's use of the property is entitled to receive from the landlord on or before the effective date of the notice an amount that is equivalent to one month's rent under the tenancy agreement.

Therefore, I find the tenant was entitled to free rent for March 2016. Since she vacated at the end of that month in response to the Notice, I find she owes no rent to the landlord. Since the tenant has vacated, I find it is moot to set aside the Notices and the landlord does not require an Order of Possession.

Conclusion:

The Application of the Tenant is successful in determining she owes no rent to the landlord and in setting aside the 10 Day Notice. A filing fee is not involved.

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 14, 2016

Residential Tenancy Branch