



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BALAY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, ET ,O, FF

Introduction

The landlord applies for an order of possession pursuant to the tenant's Notice to end her tenancy dated May 1, 2016.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant's Notice resulted in an ending of this tenancy? Is the landlord entitled to an order of possession?

Background and Evidence

The rental unit is a one bedroom apartment in a 200 unit apartment building.

The tenancy started August 1, 2015. The monthly rent is \$1170.00, due on the first of each month, plus parking. The landlord holds a \$585.00 security deposit.

On May 1, 2016 the tenant gave the landlord a handwritten and signed Notice that she was terminating her tenancy and that the last day of the tenancy would be May 31st.

Within a few days the tenant learned that the new rental accommodation she had arranged would not be available. She took steps to cancel her Notice with this landlord but the landlord was not willing to permit her to withdraw her Notice.

Analysis

A landlord receiving a tenant's Notice to end a tenancy is entitled to rely on that Notice, to advertise for new tenants and to enter into contractual relationships with new tenants, all based on the original tenant's warranty that she is leaving.

Such a Notice may only be cancelled by a tenant with the express agreement of the landlord.

The tenant's Notice here was a valid Notice and is binding on her.

However, the tenant was not a liberty to give such a short Notice to end the tenancy.

Section 45(1) of the *Residential Tenancy Act* (the "RTA") provides:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

By giving the Notice on May 1, the tenant could not end her tenancy earlier than one month after giving it; that would be June 1, and not earlier than on an effective date earlier than the day before the day in the month that rent was payable; that would be, at the earliest, June 30.

Section 53 (1) and (2) of the *RTA* provide that when a landlord or a tenant gives a Notice that does not comply, the Notice automatically corrects itself to the earliest lawful date. The provisions are:

(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

And so, while the tenant's Notice was a valid and binding Notice, it could not end the tenancy earlier than June 30 and it automatically corrected itself to that date.

In result, unless the parties reach some other agreement, this tenancy will end June 30, 2016 by operation of the tenant's Notice.

Conclusion

The landlord will have an order of possession for one o'clock on June 30, 2016.

As that date is in the future and an order of possession may not be required to be enforced, I decline to award the landlord recover of its 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: June 16, 2016

Residential Tenancy Branch