



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order to cancel the two month Notice to End Tenancy dated April 22, 2016

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the tenant resides on April 22, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlord by mailing, by registered mail to where the Landlord resides on May 18, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated April 22, 2016?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would begin on October 1, 2015, end on September 30, 2016 and "the tenancy may continue another fixed length of time." The rent was \$1500 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$750 at the start of the tenancy. The tenancy agreement states a pet damage deposit of \$750 was paid but the parties agreed the pet damage deposit was not paid.

Analysis

Grounds for Termination:

The Notice to End Tenancy relies on the following provision of the Residential Tenancy Act.

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

Section 53 of the Residential Tenancy Act provides as follows:

Incorrect effective dates automatically changed

53 (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.

I accept the evidence of the landlord that she wishes to move back into the rental unit. She testified she has been transferred back to this area and needs the rental unit for June 30, 2016. However, I do not accept the submission of the landlord that she can regain possession in the middle of the fixed term pursuant to a 2 month Notice to End Tenancy. Further, I do not accept the submission of the Tenant that the tenancy agreement gives her an option to extend the tenancy agreement for a further fixed term. The agreement states the parties “**may**” continue for a fixed term. This does not bind the parties to a further fixed term.

Section 53 provides where a landlord serves a Notice to End Tenancy that does not comply with the Act, the notice is deemed to be changed to set the effective date to the earliest date that complies with the section. I dismissed the tenant's application but set the effective date of the Notice to End Tenancy for September 30, 2016. I determined the tenancy will end on that date.

Settlement:

The tenant stated she did not want to remain in the rental unit longer than September 30, 2016. During the hearing the parties reached a settlement and they asked that I record the settlement pursuant to section 63(2) of the Act as follows:

- a. The parties agree to end the tenancy on September 30, 2016 and the tenant will vacate by that date.
- b. The parties request the arbitrator issue an Order for Possession for September 30, 2016.
- c. If the tenant finds alternative accommodation for a date earlier than September 30, 2016 the tenant shall be entitled to vacate the rental unit on an earlier date provided she gives the landlord 14 days written notice and that the landlord shall not claim for loss of rent for the unexpired fixed term.

Determination and Orders:

As a result I issued an Order for Possession effective September 30, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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 14, 2016

Residential Tenancy Branch