



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

Both parties attended the hearing and the tenant confirmed service of the Notice to End Tenancy dated July 29, 2016 to be effective September 30, 2016. The tenants served their Application personally and the landlord acknowledged receipt. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49 as they have a fixed term tenancy agreement; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need in good faith to end the tenancy in order to have the property for their own use 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 November 1, 2015 on a fixed term lease to November 30, 2016. Rent is \$2,000 a month and a security deposit and pet damage deposit was paid, each in the amount of \$1,000. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act as the unit is to be occupied by the landlord or a close family member.

The tenant filed this Application pointing out that the landlord could not legally end a fixed term tenancy for their use until the end of the fixed term. After the tenants filed their Application, the landlord apologized and issued a new Notice to End Tenancy effective November 30, 2016. Meanwhile the tenants said they were much stressed and found a new place so they gave their 10 Day Notice to End Tenancy effective September 30, 2016. They have received one month free rent for September 2016.

The tenants said they attended today to put on record the poor treatment they have received at the hands of the landlord and their agent. They felt forced to find a new place because of the original Notice to End Tenancy. They had a previous hearing over a space that was included in their lease and the landlord refuses to pay them the filing fee that was awarded to them. Just after the last hearing, they found this Notice to End Tenancy served on them. Now the landlord upstairs is subjecting them to stomping around overhead and repairs are not started although ordered in July. They lodged a complaint with City Hall. They said they are preparing another case on these issues and will file evidence about them at that time.

In evidence is the original Notice to End Tenancy, a letter from the landlord apologizing and emails. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The tenant is no longer seeking to cancel the Notice to End Tenancy since a new one was issued with the correct date to end the tenancy and the tenants have already arranged to move on September 30, 2016. As requested, I have recorded the tenants' problems to date. As the tenant is bringing another application to deal with their problems, I make no comment or finding on them.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. As the tenant is vacating on September 30, 2016 pursuant to their 10 Day Notice, I find the landlord does not require an Order of Possession. As pointed out by the tenant, he would not have brought the Application if the landlord had not attempted to end their fixed term tenancy early contrary to the Act. Therefore, I find he is entitled to recover his filing fee for this Application and a monetary order is issued.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 30, 2016 as the tenant has given a 10 Day Notice under section 50 of the Act. I find the tenant entitled to recover their 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: September 22, 2016

Residential Tenancy Branch