



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: OPC, MND, MNSD, MNDC, FF

Tenant's application: CNC

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The landlord applied for an order of possession and a monetary award. The tenant applied to cancel a one month Notice to End Tenancy for cause. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Should the Notice to End Tenancy dated June 29, 2016 be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Mission. The tenancy began September 1, 2014 for a one year term with rent in the amount of \$1,500.00 payable on the first of each month. The landlord testified that she served the tenant with a one month Notice to End Tenancy for cause dated June 29, 2016. The Notice to End Tenancy gave the tenant more than one month's notice; it required the tenant to move out of the rental unit by August 31, 2016. The reasons for the Notice were that the tenant has caused extraordinary damage to the rental property and that she has not done required repairs to the rental unit. The landlord said the tenant was served with the Notice to End Tenancy by registered mail, but she did not provide documents to show that the registered mail was sent. The landlord referred to text messages exchanged with the tenant that she said confirmed the Notice to End Tenancy was received by the tenant. In her application for dispute

resolution the landlord claimed amounts for unpaid rent, but at the hearing she confirmed that the rent was now paid in full. According to the landlord the tenant was served with two Notices to End Tenancy, one was a 10 day Notice for unpaid rent and the second was a one month Notice to End Tenancy for cause. She said that the tenant acknowledged that she received them on July 4th. She referred to a text message she received from the tenant when she said she got it on July 4th and said she should have received it on June 30th. At the hearing the tenant said that the landlord did not give her a 60 day notice and she should have given a Notice to End Tenancy for landlord's use because the landlord intends to move into the rental unit.

The landlord testified at the hearing that she intends to move into the rental unit. The landlord referred to photos that she testified showed that the tenants have caused extraordinary damage to the rental property. The tenant denied that the landlord's pictures accurately show the condition of the rental property. She said the pictures showed a butchered deer carcass and they were taken after a hunting trip, but they do not reflect the present condition of the property. The tenant denied that she received a one month Notice to End Tenancy for cause. She testified that all the rent has been paid. According to the tenant she is planning to move, but she does not agree that the landlord is entitled to an order of possession and she said the landlord should have given her a two month Notice to End Tenancy for landlord's use because the landlord intends to move into the rental unit.

Analysis

The landlord has the burden of proving that the tenant was served with a one month Notice to End Tenancy. The tenant did not admit that she received a Notice to End Tenancy for cause from the landlord and I find that the landlord has failed to establish on a balance of probabilities that the tenant was served with the proper form of notice in accordance with the service provisions of the *Residential Tenancy Act*. The landlord's application for an order of possession pursuant to the Notice to End Tenancy is therefore dismissed without leave to reapply. It is open to the landlord to serve another Notice to End Tenancy. If the landlord wants to end the tenancy because she intends to reside in the rental unit, then the appropriate Notice is a two month Notice to End Tenancy for landlord's use.

The landlord has not established a claim for unpaid rent and her application for a monetary award is also dismissed.

Conclusion

The landlord's application for an order of possession and a monetary award is dismissed. I have found that the Notice to End Tenancy was not properly served and the tenant's application to cancel the Notice to End Tenancy is granted. The tenant did not pay a filing fee and no filing fees are awarded.

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: November 09, 2016

Residential Tenancy Branch