



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlords for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlords attended the call. The tenant testified that the landlords were served with the Tenant's Application for Dispute Resolution and notice of this hearing by registered mail on November 15, 2016 and orally provided a tracking number. I accept the testimony of the tenant, and I find that the landlords have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Background and Evidence

The tenant testified that this fixed term tenancy began on July 1, 2016 and expires on June 30, 2017, and the tenant is required to vacate the rental unit at that time. However, a copy of the tenancy agreement has been provided which is silent with respect to the tenancy after the end date of the fixed term.

Rent in the amount of \$1,350.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$675.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a townhouse.

The tenant further testified that on November 14, 2016 the landlords personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated November 14, 2016 and contains an effective date of vacancy of January 15, 2017. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's

spouse)." The landlord later apologized to the tenant because the tenancy is for a fixed term which has not yet expired.

The tenant seeks an order cancelling the 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the \$100.00 filing fee.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. The *Act* also states that a landlord may issue a 2 Month Notice to End Tenancy for Landlord's Use of Property but it cannot be effective sooner than the end date of the fixed term under the tenancy agreement.

In this case, the fixed term ends on June 30, 2017 and therefore, the notice to end the tenancy cannot be issued for an effective date sooner than that. Further, the landlords have not joined the conference call hearing and have not established that the notice was given in accordance with the *Residential Tenancy Act*. Therefore, I hereby cancel the notice and the tenancy continues.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I hereby grant a monetary order in favour of the tenant in that amount, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 14, 2016 is hereby cancelled and the tenancy continues. I further grant a monetary order in favour of the tenant in the amount of \$100.00, and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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: December 30, 2016

Residential Tenancy Branch

