



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KANDOLA VENTURES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNQ

Introduction

This hearing was convened in response to an application by the tenant filed on May 18, 2017 to cancel a *2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit* (the Notice), dated May 01, 2017 with an effective date of June 01, 2017. The tenant acknowledged they sought no other application.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice issued was a valid Notice, issued in good faith, and for the stated reason(s). The landlord acknowledged receiving the evidence of the tenant and also that they did not forward any evidence to this proceeding. The parties were provided opportunity to mutually resolve their dispute to no avail.

Issue(s) to be Decided

Is the Notice to End tenancy valid?

Should the Notice to End dated May 01, 2017 be set aside?

Is the landlord entitled to an Order of Possession Pursuant to Section 55(1) of the Act?

Background and Evidence

The tenant submitted a copy of the Notice in dispute titled *2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit*. The tenant and landlord acknowledged the Notice was posted on the tenant's door and the tenant testified they received it May 03, 2017. However, the parties also acknowledged the 2 Month Notice states the purpose for the Notice is pursuant to Section 49(6) of the Act which is incompatible with the title of the Notice. The landlord acknowledged the rental unit is not a subsidized rental unit pursuant

to qualification. And, that they used a photocopy of the Notice which deleted, or cut off, the upper title of the Notice indicating the second or dual purpose of the Notice tool as also a 2 *Month Notice for Landlord's Use of Property*. The tenant further highlighted that the effective date of the Notice to End was incorrect for a 2 month notice by almost 60 days. The landlord acknowledged the errors within the Notice and explained their intention to again serve the tenant with a notice in compliance with Section 52 of the Act.

The tenant disputes the Notice to End on the basis the Notice to End was not properly issued in accordance with the provisions of the Act. The tenant also argued the landlord in this matter may not have all the necessary permits and approvals required by law to conduct the purpose stated on page 2 of the Notice.

Analysis

In this type of application, in order for a landlord's Notice to End to be effective the burden of proof rests with the respondent (landlord) to provide evidence the Notice is a valid Notice issued for the stated reason, and in accordance with all the provisions of Section 52 of the Act.

On the face of the evidence in this matter, I am satisfied the landlord may have a valid reason for issuing the Notice, but as a result of all the above, I find the landlord has not served the tenant with a valid Notice to End complying with Section 52 of the Act as prescribed in the Act. Therefore, I **Order** that the Notice to End dated May 01, 2017 **is cancelled**.

The parties acknowledged the landlord remains at liberty to issue a *new valid Notice to End*, if they have proof to support the Notice.

Conclusion

The tenant's application is granted. The landlord's Notice to End is set aside and is of no effect. The tenancy continues.

This Decision is final and binding.

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 28, 2017

Residential Tenancy Branch

