



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of the Property, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on September 20, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on July 1, 2018 as a fixed term tenancy with an expiry date of June 30, 2019. Rent is \$1,200.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$600.00 on June 19, 2018. The Tenant said a walk through was done at the start of the tenancy, but no condition inspection report was completed and signed.

The Tenant said she understands that this is a fixed term tenancy with an expiry date of June 30, 2019; therefore the 2 Month Notice to End Tenancy for Landlord's Use of the Property cannot end the tenancy until the end of the fixed term or on June 30, 2019.

The Landlord said she served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 14, 2018 by sliding it under the door of

the rental unit and then again by personal delivery on September 17, 2018. The Effective Vacancy Date on the Notice is November 30, 2018. The Landlord continued to say that her understanding of the Act is that there are two exceptions to ending a fixed term tenancy. One being if a close family member was moving into the unit and the other was if the unit was sold.

The Landlord said she had the rental unit up for sale but now her son has health issues and requires the rental unit to move into. The Landlord said it is important to her, her son and the family that the son can move into the rental unit.

The Arbitrator said section 49 2 a (iii) says a landlord cannot end a fixed term tenancy earlier than the expiry date of the tenancy agreement with a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

Consequently the Arbitrator asked the Tenant and Landlord if they would consider a Mutual Agreement to End Tenancy to help resolve this situation. The Tenant agreed to explore a settlement agreement and offered the Landlord the following:

1. End the tenancy on December 1, 2018
2. The Landlord would consent to the November 2018 being rent free and the Landlord would compensate the Tenant an additional \$1,200.00 at the end of the tenancy.

The Landlord declined the Tenant's offer and made a counter offered of \$600.00 as compensation.

The Tenant declined the Landlord's offer and said she was fine living in the unit until the end of the tenancy.

The Landlord said in closing that she would re-issue a Notice to End Tenancy at the end of the tenancy agreement on or before June 30, 2019.

The Tenant said in closing that she understands the tenancy is continuing.

Analysis

Section 49 (2) says: Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy, (for the use of a Landlord or a close family member to inhabit the rental unit)

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

I have examined the tenancy agreement and it is for a fixed term with an expiry date of June 30, 2019 and both parties are in agreement that the term of the tenancy is until June 30, 2019. Consequently, the Act states a Landlord cannot end a fixed term tenancy with a 2 Month Notice to End Tenancy for Landlord's Use of the Property prior to the expiry date of the tenancy agreement which in this situation is June 30, 2019. As a result I find the Tenant has provided grounds to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property. I order the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 14, 2018 is cancelled and the tenancy is order to continue as stated in the tenancy agreement.

As the Tenant has been successful in this matter I order the Tenant to recover the \$100.00 filing fee for this proceeding by deducting it from the December 2018 rent. The December 2018 is adjusted to \$1,100.00.

Conclusion

I order the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 14, 2018 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The December, 2018 rent payment is adjusted to \$1,100.00 so that the Tenant can recover the filing fee of \$100.00 for this proceeding from the Landlord.

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: October 30, 2018

Residential Tenancy Branch