



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 13, 2019, by the tenants to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Issue to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The parties on April 24, 2019, entered into a mutual agreement to end the tenancy effective June 30, 2019.

The tenants stated that they sent the landlord a letter on June 13, 2019, stating they are no longer agreeing to end the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenants have applied to cancel a notice to end the tenancy for cause, pursuant to 47 of the Act; however, a notice to end tenancy was not issued. I find this portion of the tenant's application cannot be considered.

The tenants seek to cancel a signed mutual agreement to end the tenancy.

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

...

(c) the landlord and tenant agree in writing to end the tenancy;

RESIDENTIAL TENANCY POLICY GUIDELINE #11

Amendment and Withdrawal of Notices

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy.

With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

In this case, the parties entered into a written agreement to end the tenancy on April 24, 2019 with an effective date of June 30, 2019. I accept the tenants sent the landlord a letter on June 13, 2019, withdrawing their consent; however, the tenants cannot unilaterally withdraw a notice to end tenancy, without the consent of the other party.

In addition, the Act does not give me the authority to cancel the mutual agreement to end the tenancy.

I have reviewed the mutual agreement to end the tenancy, filed in evidence. I find the mutual agreement to end the tenancy is valid.

I find the tenancy legally ended on June 30, 2019. The tenants have not vacated the premises and are overholding the premise.

As I have found the tenancy legally ended on June 30, 2019, I find it appropriate pursuant to section 62 and 55(3) of the Act, to grant the landlord an order of possession.

As the tenants have not paid occupancy rent for August 2019, I find the landlords are entitled to an order of possession effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenants were was not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The tenants' application to cancel a mutual agreement to end the tenancy is dismissed. The landlord is granted an order of possession.

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: August 20, 2019

Residential Tenancy Branch