



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

NCR, MT, OPR, OPL, MND, MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; for more time to make an application to cancel a Notice to End Tenancy; and to recover the fee from the Landlord for filing this Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has applied for an Order of Possession for Unpaid Rent; for an Order of Possession for Landlord's Use of Property; for a monetary Order for damages to the rental unit; for a monetary Order for unpaid rent; for a monetary Order for money owed or compensation for damage or loss; and to recover the fee from the Tenant for filing this Application for Dispute Resolution.

The Landlord withdrew her application for a monetary Order for unpaid rent for June, July, and August of 2010, as she has been given cheques for rent for those months that she has not yet attempted to cash.

The Landlord withdrew her application for a monetary Order for unpaid rent for damages as she did not intend to seek compensation for physical damage to the rental unit at this proceeding.

The Landlord withdrew her application for a monetary Order for money owed or compensation for damage or loss, as she no longer wishes to seek compensation for fines that have been, or may be, imposed by the Strata Corporation.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether Notice to End Tenancy for Unpaid Rent should be set aside; whether the Tenant is entitled to more time to apply to set aside that Notice to End Tenancy; and whether the Tenant is entitled to recover the fee for filing this Application for Dispute Resolution.

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to an Order of Possession for Unpaid Rent; to an Order of Possession for Landlord's Use of Property; and whether the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 24, 2009; that the parties verbally agreed that the tenancy would be for a fixed term that ended on May 30, 2010; that the tenancy continued on a month-to-month basis after that date; that the parties discussed creating a written tenancy agreement but one was never signed; that the Tenant was originally required to pay monthly rent of \$2,100.00 but the Landlord reduced that to \$1,000.00 per month after the tenancy began; and that the Tenant paid a security deposit of \$1,050.00 on May 24, 2009.

The Landlord contends that the rent was due on the first day of the month but the Tenant contends that there was no set date for paying the rent, although she normally paid it during the first part of each month.

The Landlord stated that on June 21, 2010 a Ten Day Notice to End Tenancy for Unpaid Rent, which was dated June 21, 2010, was posted on the Tenant's door and mailed to the rental unit by registered mail. The Landlord submitted a copy of a Canada Post receipt that corroborates a package was sent to the rental unit on this date. The Tenant stated that this Notice was not located on the door of the rental unit; was not received in the mail; and was not received by them until it was served to them with the evidence submitted by the Landlord for this proceeding.

The Landlord stated that on July 02, 2010 a Ten Day Notice to End Tenancy for Unpaid Rent, which was dated July 02, 2010, was posted on the Tenant's. The Tenant stated that this Notice was located on the door of the rental unit on July 17, 2010 when they returned from an extended absence.

The Landlord stated that on June 18, 2010 a Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 18, 2010, was posted on the Tenant's door. The Tenant stated that this Notice was not located on the door of the

rental unit and was not received by them until it was served to them with the evidence submitted by the Landlord for this proceeding.

The Landlord stated that on June 21, 2010 a Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 21, 2010, was posted on the Tenant's door and mailed to the rental unit by registered mail. The Landlord submitted a copy of a Canada Post receipt that corroborates a package was sent to the rental unit on this date. The Tenant stated that this Notice was not located on the door of the rental unit; was not received in the mail; and was not received by them until it was served to them with the evidence submitted by the Landlord for this proceeding.

The Landlord stated that on June 22, 2010 a Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 22, 2010, was posted on the Tenant's door and mailed to the rental unit by registered mail. The Landlord submitted a copy of a Canada Post receipt that corroborates a package was sent to the rental unit on this date. The Tenant stated that this Notice was located on the door of the rental unit and was received in the mail when they returned from holidays on July 17, 2010.

The Two Month Notice to End Tenancy dated June 22, 2010 declares that the reason for ending the tenancy is that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse. The Notice declared that the Tenant must vacate the rental unit by August 31, 2010.

The Landlord stated that she is currently renting a basement suite and that she intends to move into this rental unit with her husband. The male Tenant stated that they believe the Landlord wishes to end this tenancy because she has been advised by the Strata Corporation that she is not allowed to have tenants in the rental unit. The Landlord agrees that the Strata rules prohibit her from having tenants in the unit.

The Tenant stated that the Tenant's Application for Dispute Resolution was not filed until August 23, 2010, which is more than one month after the Tenant acknowledges receiving one of the Ten Day Notices to End Tenancy for Unpaid Rent and one of the Two Month Notices to End Tenancy for Landlord's Use of Property simply because the Tenant believed the deadline for disputing them had passed. The Tenant stated that the Tenant intended to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property when the Application for Dispute Resolution was filed, although the Tenant acknowledged that this was not indicated on the Application for Dispute Resolution.

Analysis

Based on the undisputed evidence presented at the hearing, I find that these parties have a month-to-month tenancy for which the Tenant is obligated to pay monthly rent of \$1,000.00.

Section 13(1) of the *Residential Tenancy Act (Act)* requires landlords to prepare a written tenancy agreement for tenancies that begin after January 01, 2004. I find that the Landlord failed to comply with this section of the *Act*.

Section 13(2)(f)(v) of the *Act* requires landlords to specify in the tenancy agreement the day in the month that rent is due. The purpose of this section is to clearly advise the Tenant when rent is due. In these circumstances the parties do not agree on the date that rent is due. In the absence of a clearly specified due date, I find that the Tenant was simply obligated to pay her rent sometime before the end of the month for which rent was due.

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant. As the Tenant was not obligated to pay rent for June until June 30, 2010, I find that the Notice to End Tenancy that was allegedly served by the Landlord on June 21, 2010 was served prematurely. As the Tenant was not obligated to pay rent for July until July 31, 2010, I find that the Notice to End Tenancy that was served by the Landlord on July 02, 2010 was served prematurely.

Based on the undisputed evidence presented at the hearing, I find that on July 17, 2010 the Tenant received a Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 22, 2010.

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In the circumstances before me, I find that the Tenant has submitted insufficient evidence to refute the Landlord's claim that she intends to move into the rental unit. I therefore conclude that the Landlord has grounds to end this tenancy pursuant to section 49(4) of the *Act*.

In reaching this conclusion, I was influenced by the Landlord's statement that she is currently renting a basement suite, which was not disputed the Tenant, which lends credibility to the Landlord's statement that she intends to move into the rental unit.

In reaching this conclusion, I was further influenced by the undisputed evidence that the Strata Corporation bylaws do not allow the Landlord to have tenants in the rental unit, which lends credibility to the Landlord's statement that she intends to move into the rental unit rather than face penalties associated to breaching Strata Corporation rules regarding renting the unit .

In addition, I find that the Landlord has grounds to end this tenancy pursuant to section 49(9) of the *Act*, which stipulates that if a Tenant does not make an application for dispute resolution within fifteen days of receiving a Two Month Notice to End Tenancy the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. I find that the Tenant has never applied to set aside a Two Month Notice to End Tenancy and that the explanation that the Tenant believed she had

done so when she filed her application on August 23, 2010 is not sufficient to cause me to conclude that it was properly filed.

Even if I had found that the Tenant did file an Application for Dispute Resolution seeking to set aside a Two Month Notice to End Tenancy, I would have declined the Tenant's application for more time to apply to set aside that Notice to End Tenancy. Section 66(1) of the *Act* authorizes me to extend a time limit established by the *Act* only when there are exceptional circumstances. I do not find that the Tenant's failure to understand the Tenant's right to dispute a Notice to End Tenancy to constitute exceptional circumstances, as I find that the Tenant was obligated to seek advice if she did not understand her rights.

Conclusion

As there is insufficient evidence to cause me to conclude that the Landlord has not served the Two Month Notice to End Tenancy in good faith, I find that the Landlord is entitled to an Order of Possession on the basis of the Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 22, 2010, that was received by the Tenant on July 17, 2010.

The evidence shows that the Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 22, 2010 was served in accordance with section 88(c) of the *Act* and that it had a declared effective date of August 31, 2010. As the effective date of the Notice has passed, I find that the Landlord is entitled to an Order of Possession that is effective two days after it is served upon the Tenant.

As the Landlord has been granted an Order of Possession on the basis of the Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 22, 2010, I decline to consider the merits of the Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 18, 2010 and the Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 21, 2010, which the Tenant stated were not received until they were served as evidence in relation to this proceeding.

The Landlord and the Tenant are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord and the Tenant are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two months rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for

that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

As the Landlord has established that she has grounds to end this tenancy on the basis of section 49 of the *Act*, and I have ended the tenancy on the merits of the Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 22, 2010, I decline to consider the merits of the Ten Day Notices to End Tenancy that were served to the Tenant. I find that it is unnecessary to consider the merits of those Notices, given that the rent has been paid and the tenancy is ending on the basis of the Two Month Notice to End Tenancy.

As the Landlord has established that she has grounds to end this tenancy on the basis of section 49 of the *Act*, and I have ended the tenancy on the merits of the Two Month Notice to End Tenancy for Landlord's Use of Property, which was dated June 22, 2010, I decline to consider the merits of Tenant's application for more time to dispute the Ten Day Notice to End Tenancy.

As both parties acted reasonably when they filed their Application for Dispute Resolution I find that they must each pay the fee for filing their own Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 02, 2010.

Dispute Resolution Officer