



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute codes

CNC, OPC, OPB

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* for Orders as follows:

Tenant:

An Order to Cancel a Notice to End Tenancy for Cause - Section 47; based on a letter to the tenant dated December 31, 2010, requesting the tenant to vacate for reasons of cause advanced by the landlord in the letter.

Landlord:

An Order of Possession for Cause / breach of the agreement with the landlord - Section 55; based on a letter to the tenant dated December 31, 2010, requesting the tenant to vacate for reasons of cause advanced by the landlord in the letter.

Both parties attended the in- person hearing and were given opportunity to present relevant evidence and make relevant submissions. Neither party requested an adjournment.

Priliminary Matters

The landlord argues that the Act does not apply to this living accommodation, as it incorporates a supported living program component that assists women who reside in the housing complex. The landlord advanced that the program component offers the women residents of the housing complex a myriad of supports and information which they categorize as rehabilitative or beneficial to their residents and that their participation in the program is expected but not mandatory. The tenant and tenant representative dispute that the claimed support services are an integral component with the housing component and asserted that the residential unit does come under the Act. The parties were advised that I would make a determination regarding jurisdiction, in my

decision. The hearing proceeded on the assumption of jurisdiction and the merits of the respective applications.

For this type of application, the onus is on the landlord to prove they issued a valid Notice to End and that it was issued for valid and sufficient reasons.

Issue(s) to be decided

Do I have jurisdiction under the Act to make a decision on the applications before me?
In the affirmative, has the landlord served the tenant with a valid Notice to End to end the tenancy, as required by the Act?
Is the landlord entitled to an Order of Possession?

Background and evidence

The relevant evidence in this matter is as follows. This tenancy began in February 2010 and continues on a month to month basis. The tenant pays a subsidized rental amount based on the “tenant’s financial position”. There is a written *program agreement* which encompasses the standard terms of a tenancy agreement as well as additional terms associated with residing in the housing complex.

It is undisputed that on December 31, 2010 the landlord gave the tenant a letter outlining a quantum of issues and alleged cause for ending the tenancy, and stated the tenant was “expected to vacate unit 507 by 12 pm Friday January 14th. 2011.” It is undisputed that the landlord has not given the tenant a 1 Month Notice to End Tenancy for Cause.

Analysis

I find that the landlord’s document evidence states that *supported living program* component is “offered” or made available in the course of , “women residing at the (the Development)” ; and, that it is to provide a supportive environment while the women live there. I find that the program and any services afforded by it are secondary to the housing accommodations. Therefore, I find that this tenancy is neither transitional housing, nor housing that is made available in the course of providing rehabilitative or therapeutic treatment or services – rather, it is the other way around. As a result, I find that this living accommodation is a tenancy under the Act.

Section 44 of the Act, in part, states as follows:

How a tenancy ends

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

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

Section 52 of the Act states as follows: **(emphasis for ease)**

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

In this matter, I find that the landlord did not give the tenant a valid or legal Notice to End in concert with the requirements of Section 52 of the Act. As a result, the landlord's

letter dated December 31, 2010 is not effective to end this tenancy, and is null and of no effect, and the landlord is not entitled to an Order of Possession.

The landlord's Application **is dismissed**. The tenant's application **is granted**.

Conclusion

The tenant's application to set aside the landlord's Notice to End is granted, and the tenancy continues.

The landlord remains at liberty to give the tenant a *valid* Notice to End, for *sufficient and valid reasons*.

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*.