



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL O RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for the landlord's use of property, for other reasons, and to obtain an Order to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided.

Counsel confirmed the Landlord had no issues relating to the method or timing of the service of the hearing documents received from the Tenant.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Preliminary Issues

The Tenant advised that he believes he had sent a copy of his evidence to the *Residential Tenancy Branch* via fax prior to the hearing. He was not able to provide testimony as to the number of pages, the date it was sent, or the fax number it was sent to. He stated that he would not be able to acquire that information until after the hearing as he would have to sort through his documents to find the information. The Tenant was provided my direct fax number and was instructed to send me a fax that afternoon (January 19, 2011) with the details of how and when he submitted his evidence. He was advised not to send any other documents as they would not be considered in my decision.

Counsel requested the Tenant's application be amended to remove Agent 1's name as a respondent. She advised Agent 1 was hired by the Landlord as a contractor and is not a named party in the written tenancy agreement which was entered into by the parties.

The Tenant confirmed that Agent 1 is not listed in any of the documents as the Landlord and acknowledged that he is aware that Agent 1 has acted on behalf of the Landlord as their contractor.

A respondent is defined as the landlord or tenant against whom the application for dispute resolution has been made. In this case the evidence supports Agent 1 is not the Landlord and has not signed the tenancy agreement as agent for the Landlord. Based on the aforementioned I approve Counsel's request to amend the application and Agent 1's name has been removed from the participants listed in the style of cause.

Issue(s) to be Decided

1. Has the Tenant been issued a 2 Month Notice to End Tenancy for landlord's use of the property?
2. If so, is he entitled to compensation equal to one month's rent?
3. Is the Tenant required to vacate the rental property at the end of the fixed term tenancy agreement?
4. Has the Landlord breached the Act, regulation or tenancy agreement?
5. If so, has the Tenant met the burden of proof to be awarded monetary compensation for reduced rent?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term written tenancy agreement on October 10, 2010 for a tenancy that was effective July 15, 2010 and expires February 28, 2011 at which time the Tenant is required to vacate the property. Rent is payable on the first of each month in the amount of \$1,500.00 and the Tenant paid a security deposit of \$750.00 on or before October 10, 2010.

The Tenant testified he believes the Landlord did not enter into the tenancy agreement in good faith. He stated they worked through several drafts of the tenancy agreement before coming to agreement October 10, 2010. All along there were conversations and e-mails relating to the possibility of extending the tenancy to a date that would be sixty days prior to when the Landlord would begin construction. He confirmed he was aware of the terms of the fixed term agreement requiring him to vacate the property on February 28, 2011, prior to signing the agreement; however he believed he had a verbal agreement for a flexible end date that would be determined by sixty days prior to construction.

The Tenant confirmed he has not been issued a 2 Month Notice to End Tenancy for landlord's use. He stated that he is of the opinion that the Landlord is ending his tenancy for their use so he is therefore entitled to compensation equal to one month's rent pursuant to section 51 of the *Residential Tenancy Act* (Act). He states he has arranged alternate accommodations at double the price (\$3,000.00 per month) and is seeking compensation from the Landlord to reduce his new rent to an amount equal to \$1,500.00 from the onset of the higher rent to sixty days prior to the start of construction.

Counsel denied the Tenant's allocations that the Landlord acted in bad faith. They are of the opinion that this tenancy ends February 28, 2011, in accordance with the tenancy agreement which meets the requirements of the *Residential Tenancy Act*.

Agent 1 confirmed that they negotiated several draft tenancy agreements prior to issuing the final draft on October 7, 2010. He stated the Tenant was working with a consultant throughout this process right up until they were both sent the October 7th draft. He confirmed there were discussions throughout the process where the Tenant requested the opportunity to extend the lease. The discussions were amicable and the Agent stated they would consider the Tenants requests however there were no verbal agreements made. There were no commitments made and the Tenant was well aware of the terms of the final draft of the tenancy agreement. After the tenancy agreement was signed he received an e-mail from the Tenant on November 17, 2010 requesting an extension to the tenancy. The Agent responded to this e-mail stating an extension was unlikely.

Counsel advised in the early stages of their negotiations the draft tenancy agreements did not meet the requirements of the Act. They continued their negotiations and by the October 7th draft the agreement was compliant with the Act. The only item being negotiated in the last draft was the description and amount of property being rented.

The Tenant is of the opinion that construction is delayed and that he should be allowed to extend his tenancy based on his numerous conversations and e-mail requests. He confirmed he hired a contractor who was an engineer and expropriation expert, to assist him in this process. He believes his contractor did not assist him with the final draft of the tenancy agreement. He interprets the Act in a manner that will allow him to withhold his last month's rent because he is being evicted for the landlord's use of the property. He argues the Landlord does not have the permits required to complete the construction therefore he should be allowed to stay longer. He is of the opinion that this has been handled in bad faith by the Landlord which has caused him to have to find other accommodations at double the price. The Landlord has also breached the tenancy

agreement by not paying for the cost of utilities so he has deducted the utility amount from his previous rent payments.

Agent 2 testified and referred to tab 4 of their evidence which included a copy of a letter to the Tenant dated December 6, 2010. This letter clearly indicates the tenancy will not be extended and the Tenant will be required to vacate the property February 28, 2011. It also references the issue of utilities and instructs the Tenant to provide the Landlord with copies of the actual utility bills to support the reduced rent provided by the Tenant.

Agent 1 disputed the Tenant's testimony pertaining to the presence of the Tenant's contractor. Agent 1 advised he was working through the contractor right up until the final draft was sent to both the contractor and the Tenant. He received an e-mail dated October 7, 2010 as the "copy recipient" where the Tenant sent his contractor a message stating he no longer required his services. He contends they had an open relationship with the Tenant throughout the negotiations and rejects the Tenant's argument of poor faith.

In closing Counsel stated the Tenant was very selective in providing his evidence. The Landlord's Agents tried very hard to accommodate the Tenant throughout the process and they feel there is no basis for the Tenant's claim. Their position is the Tenant agreed to the fixed term tenancy as supported by the signed tenancy agreement.

The Tenant confirmed the respondents were very civil to deal with. He contends the process of the lease is fraud and was not handled in good faith with the issue surrounding the end of the tenancy.

Analysis

The Tenant was provided the opportunity to fax me the information pertaining to how he served the *Residential Tenancy Branch* with a copy of his evidence the afternoon of January 19, 2011. No fax has been received from the Tenant with this information.

I have carefully considered all of the testimony and the evidence before me. This included, among other things, a copy of the fixed term tenancy agreement signed by the parties on October 10, 2010; written submissions of the respondents and various letters and e-mails sent between the parties.

I heard undisputed testimony, which was supported by the documentary evidence, that the parties signed a written fixed term tenancy agreement on October 10, 2010. I accept

the Tenant's testimony that he was aware of the terms of the tenancy agreement which includes the following clause under section 4 (a) "The tenancy starts on July 15, 2010. This tenancy is for a fixed term and ends on February 28, 2011 on which date the Tenant is required to vacate the Rental Unit." Based on the aforementioned, I find the parties had capacity to enter into the agreement, consensus was reached after working through several drafts, and the requirement of compensation has been met as the Tenant occupies the rental unit in exchange for monthly rent. There is insufficient evidence to support that the agreement was made in bad faith or that it was obtained in a fraudulent manner. Therefore, I find the tenancy agreement to be valid and in full force and effect.

There was opposing testimony pertaining to the presence of a verbal agreement to extend the end date of the tenancy. The Landlord's December 06, 2010 letter to the Tenant is very clear that the tenancy will end on February 28, 2011 in accordance with the tenancy agreement. The start and end date of a tenancy agreement is considered a standard term of the agreement. Section 14 (1) of the act states a tenancy agreement may not be amended to change or remove a standard term. Therefore, even if there was a verbal agreement to change the end date of a written tenancy agreement, it could not be enforced under the Act.

Section 44(b) of the Act provides a tenancy ends if 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. Based on the aforementioned I find the Tenant's tenancy agreement ends and he must vacate the property no later than **1:00 p.m. on February 28, 2011.**

The Tenant has not been issued a Notice to End Tenancy pursuant to section 49 of the Act. Therefore he is not entitled to compensation under section 51 which clearly states that a tenant who receives a notice to end a tenancy under section 49 (emphasis added) is entitled to receive compensation from the landlord. Based on the aforementioned I dismiss the Tenant's claim for compensation equal to one month's rent, without leave to reapply.

The Tenant was cautioned that he is required to pay his rent in full in accordance with the tenancy agreement and section 26 of the Act. If the Tenant fails to comply the Landlord would be at liberty to serve him with a 10 Day Notice to End Tenancy and seek an immediate Order of Possession of the unit.

I find that in order to justify payment of damages or losses under section 67 of the Act, the Applicant Tenant would be required to prove that the other party did not comply with

the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. After careful review of the testimony I find the Tenant provided insufficient evidence to prove the Landlord has breached the Act, regulation or tenancy agreement. Therefore, I dismiss the Tenant's monetary claim of an amount that would reduce his future rent from March 1, 2011 until sixty days before construction, without leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant's application in its entirety, without leave to reapply.

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: January 21, 2011.

Residential Tenancy Branch