



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

DRI, MNDC, MNR, OLC, PSF, FF

Introduction

This hearing dealt with an orally amended application in the hearing, by the tenant, filed on September 04, 2012 to dispute a rent increase, compensation for damage and loss, cost of emergency repairs, and for the landlord to comply with the Act. Within the details of dispute the tenant states the landlord gave the tenant a Notice to End in response to the tenant's disapproval of a rent increase. I accept that the tenant also intended to dispute the Notice to End: a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated August 30, 2012 with an effective date of October 31, 2012. The tenant further seeks recovery of the filing fee in this matter.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord acknowledged receiving the tenant's evidence comprising of a copy of the tenancy agreement and rent receipts signed by the landlord, for the duration of the tenancy to date.

It must further be noted that the tenant orally amended their application to exclude their dispute of a rent increase to \$1250 per month.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?
Is the Notice to End tenancy valid and issued, in good faith for valid reasons?
Should the Notice to End dated August 30, 2012 be set aside?
Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenant and landlord each testified, in agreement as to the particulars before them as set out in the 2 Month Notice to End issued by the landlord. The landlord did not advance or provide any document evidence to this matter. The Notice to End was issued by the landlord for the following reason;

-the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant disputes the Notice to End on the basis they have a fixed term tenancy agreement with an end date no sooner than July 01, 2013, as the tenancy agreement states the fixed term is "for 2 – 3 years". The tenant provided a copy of the tenancy agreement purportedly signed by both parties June 25, 2011. The tenant claims the landlord's signature is the same as in the rent receipts also provided into evidence. The landlord claims that the tenancy agreement, although created by the tenant bears the landlord's signature – but – also claims the tenant obtained the landlord's signature only recently for improper reasons. The landlord further testified that the landlord's son and their wife, currently residing with the landlord, would be occupying the rental unit below. The landlord's son testified this to be accurate.

The tenant also claims back the costs they put into the rental unit at the outset of the tenancy in order to make the rental unit acceptable to them. The tenant claims they have an abundance of receipts which they did not submit. The tenant did not provide the basis for their claim for the cost of emergency repairs, or any other aspect of their application.

Analysis

In this type of application, the burden of proof rests with the respondent (tenant) to prove their claims on application. However, the burden of proving that the 2 Month Notice to End was validly issued rests with the landlord.

The tenant has not provided sufficient evidence to establish their claims for a monetary order, or for the cost of emergency repairs. As a result, these items within their application **are dismissed**, without leave to reapply.

I accept the tenancy agreement provided by the tenant as the valid tenancy agreement governing this tenancy. I find the landlord signed this agreement. I find the tenant signed this agreement. I accept that the tenant created the document, but the landlord

accepted the agreement by their signature. I find the agreement is a fixed term agreement for 2 years – not 2-3 years as stated. I find that this ambiguity within the agreement reflects the minimal intentions of the parties that the fixed term would be at least for 2 years. Therefore, I find the fixed term period ends July 01, 2013, and according to the agreement may continue on a month to month basis thereafter.

Section 49 of the Act, in part, states as follows: (emphasis for ease)

Landlord's notice: landlord's use of property

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

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

(b) 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

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

Section 49 of the Act – **Landlord's Notice: Landlord's use of property** - clearly states that a landlord may end a tenancy under the provisions of Section 49 of the Act by giving a 2 Month notice to end the tenancy. In this matter, I find that the landlord may well have issued the Notice to End in good faith and for a valid reason, However, the landlord may not give the tenant a 2 Month Notice to End the tenancy for landlord's with an effective date earlier than the date specified as the end of the tenancy – July 01, 2013.

Therefore, **I Order** that the Notice to End dated August 30, 2012 – with an effective date of October 31, 2012 **is cancelled and of no effect**, and the tenancy , for now, continues. The tenant is entitled to recover the **filing fee** for this application.

If necessary, the landlord is at liberty to issue another new valid Notice to End for valid reason, with an effective date no earlier than July 01, 2013.

Conclusion

The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

The tenant's application for a monetary order and for the cost of emergency repairs are each **dismissed**, without leave to reapply.

I Order the tenant may deduct **\$50.00** from a future rent in satisfaction of the filing fee.

This Decision is final and binding on both parties.

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 10, 2012
