



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice") and a monetary order for money owed or compensation for damage or loss.

The hearing process was explained to the attending parties and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-At the outset of the hearing, the tenant testified and the landlord agreed that she had received the tenant's amended application and evidence.

The landlord supplied 2 pages of documentary evidence, which was received by the Residential Tenancy Branch ("RTB") just two business days prior to the hearing and the tenant stated that he had not receive the evidence at all.

I have excluded the landlord's evidence due to her failure to comply with section 4.1 of the Rules. I note that the landlord's evidence would have had no impact upon my Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice and to monetary compensation?

Background and Evidence

I heard undisputed evidence that this tenancy originally began on February 1, 2010, and that a new tenancy agreement was signed on February 1, 2012, for a current monthly rent of \$400.

The tenancy agreement states, in part, that the fixed term of the tenancy was through January 31, 2014, following which the tenancy may continue on a month to month basis thereafter.

The 1 Month Notice to End Tenancy for Cause which is the subject of this application, was dated January 26, 2014, for an effective move out date of April 30, 2014. The landlord submitted that she served the Notice to the tenant on January 26, 2014, and the tenant submitted that he received the Notice on January 28, 2014.

The Notice did not list any causes, as the boxes associated with each alleged cause on the standard Residential Tenancy Branch ("RTB") form used by the landlord were not marked. I must note that the landlord altered this Notice, as she wrote over the "1" in the title of the form, to make the "1" a "3," in her attempt to give the tenant 3 months notice to vacate.

Although the Notice did not list an alleged cause committed by the tenant, the evidence made clear that the landlord believed that the tenant was to vacate the rental unit at the end of the fixed term listed on the latest tenancy agreement, or January 31, 2014, and that because he did not, she was giving him an additional notice.

As the Notice did not list any alleged causes, it was not necessary to hear from tenant in that regard.

As to the tenant's claim for monetary compensation, the tenant listed a monetary claim of \$1600.

The tenant's relevant documentary evidence included a letter from the landlord, dated January 26, 2014, telling the tenant to move out of the rental unit by the end of April 2014, as the tenancy agreement was to end by January 31, 2014, a copy of the Notice dated January 26, 2014, a letter from the landlord dated February 3, 2014, reminding the tenant to move out by April 30, 2014, a 1 Month Notice to End Tenancy for Cause, dated July 30, 2012, dispute resolution documents showing the tenant's application in dispute of that Notice, dispute resolution documents filed by the tenant regarding another 1 Month Notice issued by the landlord, for a hearing on January 28, 2014, and the written tenancy agreement signed by the parties and dated January 13, 2012.

In support of his claim the tenant's advocate submitted that in the last 2 years, the tenant has had to deal with multiple notices from the landlord in their attempt to evict him, all lacking merit, having to expend an excessive amount of time in seeking cancellation of the Notices.

The advocate submitted that including the Notices on the proper form, the landlords have submitted other handwritten notices to the tenant to vacate.

The advocate stated that the tenant has had to file 6 applications with the RTB in his dealings with the landlord, which has caused the tenant numerous hours of his time.

The tenant submitted that the landlord has entered his bathroom without notice.

The tenant, through his advocate, stated that a reasonable amount of compensation is the value of monthly rent for 4 months.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In order to end a tenancy under section 47 of the Act for alleged cause, as is the case before me, the landlord is required to state a reason for which they seek to end the tenancy. As the landlord failed to mark any reasons, I find the Notice is not valid.

I therefore order that the Notice dated and signed January 26, 2014, be cancelled and of no force or effect, with the result that the tenancy continues until it may otherwise end under the Act.

I advise the landlord that the written tenancy agreement states that this tenancy was to continue beyond the fixed term, or January 31, 2014, here, on a month to month basis, as the agreement did not require the tenant to move out of the rental unit. The tenancy is now a month to month tenancy, and is no longer a fixed term tenancy.

As to the tenant's claim for compensation, Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In the case before me, I accept the tenant's undisputed evidence that he has received multiple notices from the landlord, both on an RTB form and free form notices, attempting to end the tenancy and that he was compelled to file applications for dispute resolution in dispute for the same. I was, however, not provided the Decisions from the other dispute resolution hearings, and I was therefore not able to determine if the previous notices lacked merit.

I also had no evidence that the landlord has entered the rental unit illegally without notice, as there was no written communication to the landlord seeking redress.

I therefore could not determine that the landlord has breached or failed to provide the tenant with his rights to quiet enjoyment.

I do, however, find the present Notice to end the tenancy issued by the landlord, on January 26, 2014, lacked merit.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment occurs with frequent and ongoing interference by the landlord. The repeated issuance of invalid and unsubstantiated Notices to the tenant could be construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

Due to this, I must advise the landlord that issuing repeated groundless Notices to the tenant, such as is the case here, could result in the tenant being successful in future circumstances where he may seek compensation for a loss of quiet enjoyment and a devaluation of the tenancy.

A tenant is entitled to enjoy his home, free from the worry of further, unfounded eviction notices.

Conclusion

The tenant's application has been granted as I have ordered that the landlord's 1 Month Notice to End Tenancy for Cause dated January 26, 2014, be cancelled.

I order the landlord to comply with the Act and direct that the tenant be given quiet enjoyment of the rental unit.

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: March 26, 2014

Residential Tenancy Branch

