



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CML Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, OPT, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; and for an order of possession.

The hearing was conducted via teleconference and was attended by the tenant; her advocate; the landlord; and the landlord's agent.

At the outset of the hearing the tenant clarified that she is still residing in the rental unit and as such she is in possession of the rental unit and as such is not in need of an order of possession. Therefore, I amend her Application for Dispute Resolution to exclude the matter of possession.

The tenant also clarified at the start of the hearing that she had checked off "Other" on the Application for Dispute Resolution as she wanted a determination of whether or not the tenancy would continue.

During the hearing the landlord did not request an order of possession should the tenant be unsuccessful in his Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a 1 Month Notice to End Tenancy for Cause and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 66 of the *Residential Tenancy Act* (Act).

Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on March 30, 2015 for a 3 month fixed term tenancy beginning on April 1, 2015 for a monthly rent of \$800.00 due on the 1st of each month with a security deposit of \$400.00 paid. The tenancy agreement has a clause (2(c)) that states: “At the end of this time the tenancy may continue on a month to month basis, or another fixed length of time, unless the tenant or landlord gives written notice to end the tenancy at least 1 clear month before the end of this term”; and
- A copy of a letter dated May 28, 2015 from the landlord to the tenant stating the letter is intended to inform the tenant that the landlord “will not be renewing your Tenancy as per the Residential Tenancy Agreement you entered into on or about March 30, 2015. As per section 2(b)(c) this letter will serve as our one (1) month notice that you are to vacate suite [address provided] on or before June 30, 2015.

The parties confirm that the landlord did not at any time issue the tenant a 1 Month Notice to End Tenancy for Cause. The parties confirmed the landlord provided the tenant with the above noted letter dated May 28, 2015.

The landlord testified that they did not issue the tenant a 1 Month Notice to End Tenancy for Cause despite complaints of marijuana usage by the tenant because they felt it would be better to just end the tenancy by not extending the term beyond the fixed term of the tenancy.

The landlords invoked clause 2(c) of the tenancy agreement and advised the tenant in the May 28, 2015 letter that they would not be “renewing” her tenancy.

Analysis

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a 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; or
- f) The director orders the tenancy is ended.

Despite the landlord's letter dated May 28, 2015, I find that the only way a landlord may end a tenancy is in accordance with Section 44.

I find the letter issued on May 28, 2015 is not a notice to end tenancy as required under Section 46, 47, 48, 49, or 49.1.

I also find that the tenancy agreement, despite being for a fixed term tenancy, did not require the tenant to vacate at the end of the fixed term; the tenant and landlord did not agree in writing that the tenancy would end (either in the tenancy agreement or by any other agreement); the tenant has not vacated or abandoned the rental unit; the tenancy agreement is not frustrated or there is no order from the director indicating the tenancy has ended.

Section 44(3) of the *Act* states, if, on the date specified as the end of the fixed term the tenancy agreement that does not require the tenant to vacate the rental unit on that date and the landlord and tenant have not entered into a new tenancy agreement, they are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

As a result, I find that the portion of clause 2(c) of the tenancy agreement that allows the landlord to give the tenant a written notice at least 1 month before the end of the fixed term that they do not want to enter into another fixed term tenancy does not provide the landlord with a mechanism for the landlord to end the tenancy.

I find that the clause only allows the landlord and tenant to provide written notice to the other party that they do not intend to enter into another fixed term agreement. However this does not mean that the tenancy must end when the tenancy agreement does not

require the tenant to vacate the rental unit at the end of the fixed term. Section 44(3), in fact, requires that the tenancy **must** continue on a month to month basis.

I also find that any clause that would allow the landlord to end a fixed term tenancy in such a manner is an attempt by the landlord to contract outside of the *Act* and would not be considered enforceable pursuant to Section 6(3)(a) of the *Act*.

Conclusion

Based on the above, I find that the tenancy has not ended and it remains in full force and effect until ended in accordance with the provisions of the *Act*.

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: July 27, 2015

Residential Tenancy Branch

