



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, OLC, LRE, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlords' 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The landlord ER (the landlord) appeared on behalf of both landlords. The landlord was joined by his agent. The tenant DL (the tenant) appeared on behalf of both tenants. No issues of service were raised by either party.

Preliminary Issue – Scope of Application

The tenants vacated the rental unit on 31 August 2015. On that basis, various remedies sought by the tenants are moot. The tenants withdrew the following claims at the hearing:

- more time to make an application to cancel the landlords' 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49; and

- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Are the tenants entitled to order requiring the landlords to comply with the Act, regulation or tenancy agreement? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

This tenancy began 1 March 2015 and ended 31 August 2015. Monthly rent was \$2,350.00. The parties entered into a written tenancy agreement in February 2015. This was the second, successive, fixed-term tenancy agreement for this rental unit and these parties.

I was provided with a copy of the tenancy agreement. The agreement is in the Residential Tenancy Branch's standard form. Clause 2 to that agreement contains the following fields:

2. LENGTH OF TENANCY (please fill in the dates and times in the spaces provided)

This tenancy starts on:
day month year

Length of tenancy: (please check a, b or c and provide additional information as requested)
 This tenancy is:

☐ a) on a month-to-month basis

☐ b) for a fixed length of time: ending on:
length of time day month year

At the end of this fixed length of time: (please check one option, i or ii)

☐ i) the tenancy may continue on a month-to-month basis or another fixed length of time

☐ ii) the tenancy ends and the tenant must move out of the residential unit
 If you choose this option, both the landlord and tenant must initial in the boxes to the right. →

☐ c) other periodic tenancy as indicated below:
☐ weekly ☐ bi-weekly ☐ other:

Landlord's Initials: Tenant's Initials:

The form has been filled out to indicate that the tenancy starts on 1 March 2015. The tenancy continues for a length of six months and ends 31 August 2015. The boxes at

clause 2(b) and 2(b)(ii) are checked. There are no initials by any party at clause 2(b)(ii). The agreement is signed by all four parties.

The tenant testified that prior to the expiration of the first tenancy agreement, the tenants were offered to continue on a month to month basis; however, the offer was rescinded prior to any agreement being executed. The tenant testified that the tenants understood that the landlords would not enter into a month-to-month tenancy because of a desire to refinance.

On 5 February 2015 the landlord emailed the tenants:

...we are not prepared to enter into a month to month tenancy but will enter into a new lease for 6 months ending August 31, 2015 at the same rental as in the existing lease...

If this arrangement is satisfactory for you please sign the attached Tenancy Agreement and email it back to me for our signature.

...

If this arrangement is not satisfactory, we will require vacant possession on the 28th day of February, 2015.

On 19 June 2015 the landlords wrote to the tenants confirming that the tenancy would end 31 August 2015.

The tenants submit that as the boxes at clause 2(b)(ii) were not initialled by the tenants or the landlords the tenants are not bound by the fixed term. In particular, the tenant submits that the tenants did not understand that they were bound by this term to vacate the rental unit. The tenants submit that the appropriate way to terminate the tenancy was through the issuance of a 2 Month Notice with payment of the appropriate compensation to the tenants. The tenants seek an order requiring the landlords to comply with the provisions regarding 2 Month Notice and pay compensation.

Analysis

This dispute centers on whether vacant possession was required at the end of the second tenancy agreement by virtue of the fixed term or whether the tenancy continued on a month to month basis.

Fixed-term tenancy is defined in section 1 of the Act:

“fixed term tenancy” means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends;

Subsection 13(2) sets out the structural requirements of a tenancy agreement:

- (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:...
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;

Paragraph 44(1)(b) of the Act provides that 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...

While the standard form issued by the Residential Tenancy Branch makes initials a requirement, there is no legislative requirement. In this case, I must look to all the surrounding circumstances in order to determine the binding terms of this tenancy. The landlords had made it clear to the tenants in prior communication that they were not interested in continuing the tenancy on a month-to-month basis, in particular, the email dated 5 February 2015. The box at clause 2(b)(i) was clearly left unchecked and the box for clause 2(b)(ii) was clearly checked. In addition, this is the second tenancy agreement of this type that the tenants had entered into for this tenancy. They were alive to the issue of end of tenancy in a fixed term agreement.

A landlord has a right to the possession of a rental unit where the tenancy has ended. From the evidence I find that the tenants and landlords had entered into the type of agreement contemplated in paragraph 44(1)(b) of the Act. I find that the tenancy under this agreement ended 31 August 2015. As the tenant ended pursuant to paragraph 44(1)(b) of the Act, the tenants are not entitled to compensation that would otherwise be payable pursuant to a 2 Month Notice.

As the tenants have not been successful in their application, they are not entitled to recovery of their filing fee from the landlords.

Conclusion

The tenants' application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 14, 2016

Residential Tenancy Branch