Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wakesiah Apts, Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL, MNDC, 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 a monetary order.

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

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 Month Notice to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to the tenant's claim for monetary compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's monetary claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 2 Month Notice. I exercise my discretion to dismiss the tenant's monetary claim. I grant the tenant leave to re-apply for his monetary claim.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

During the hearing the tenant testified that he had not received any evidence from the landlord. The landlord originally stated that he had served the tenant with his evidence

by email. The landlord later stated that he had checked his records and found that he had not sent an email to the tenant with his evidence.

I advised both parties that I could not consider any evidence not received by the tenant that was served by email because email was not an acceptable method of service under the *Act*. As the landlord later confirmed he had not served the tenant even by email, I note that I have not considered any of the landlord's documentary evidence.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to dispute a notice to end tenancy and to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Sections 47, 66, 67, and 72 of the *Act.*

Background and Evidence

The parties agreed the tenancy began on December 1, 2015 as a month to month tenancy for a monthly rent of $750.00 due on the 1st of each month with a security deposit of $375.00 paid. The parties agreed that a pet damage deposit was also paid but they did not agree on the amount.

The tenant submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 29, 2016 with an effective vacancy date of April 30, 2016 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant acknowledged receiving the 2 Month Notice on February 29, 2016. The tenant stated that he was originally not going to dispute the notice because one of the construction workers on site had promised that the landlord would find another unit in the property for the tenant to move into.

The tenant stated that it was not until the landlord's agent told him later that the landlord would not be providing him with another unit that he decided to apply to dispute the 2 Month Notice. The tenant could not identify specifically when the landlord told him or when he decided he wanted to dispute the 2 Month Notice.

The tenant stated that after that he did not have identification and he need to get that before he could submit his Application for Dispute Resolution. He stated that is why he did not apply until March 18, 2016.

The landlord submitted that the construction worker had stated that there might be a possibility that the landlord would consider the potential of providing the tenant with another rental unit but that no promises were made.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish the rental unit or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 49(8) of the Act stipulates that a tenant may dispute a notice issued under Section 49 by submitting an Application for Dispute Resolution within 15 days of receiving the notice. Section 49(9) states that if the tenant does not submit an Application for Dispute Resolution within 15 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I accept the tenant's testimony that he received the 2 Month Notice to End Tenancy for Landlord's Use of Property on February 29, 2016. As such, I find the tenant had until March 14, 2016 to file an Application for Dispute Resolution to seek to cancel the 2 Month Notice.

Section 66 of the *Act* states the director may extend a time limit established under the Act only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend the time limit. The Guideline goes on to say that exceptional implies that the reason for failing to do something at the time required is very strong and compelling.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

As the landlord's agent disputes that the landlord had agreed to give the tenant another rental unit and the tenant has provided no additional evidence to corroborate the claim that he had an agreement with the landlord to be given another rental unit, I find the tenant has failed to establish the landlord has made any such promise.

Regardless of whether or not such an agreement had been reached, I find that these circumstances do not constitute an exceptional reason to not file an Application for Dispute Resolution within the required timeframe. As such, I dismiss the portion of the tenant's Application seeking additional time to submit his Application to dispute the 2 Month Notice.

As I have found the tenant is not entitled to additional time to submit his Application for Dispute Resolution seeking to cancel the 2 Month Notice I find the tenant has failed to file such an Application within the required time frames in accordance to Section 49(8). As such, I find the tenant is conclusively deemed to have accepted the end of the tenancy and he must vacate the rental unit pursuant to Section 49(9).

As I have found the tenant is conclusively deemed to have accepted the end of the tenancy I make no findings on the validity of the reasons for the landlord has issued the 2 Month Notice.

Based on the above, I dismiss the tenant's Application for Dispute Resolution seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued by the landlord on February 29, 2016 complies with the requirements set out in Section 52.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

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: May 03, 2016

Residential Tenancy Branch