Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNL FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on May 17, 2016. The Tenant filed seeking more time to file his application to dispute a notice to end tenancy; to obtain an order to cancel a 2 Month Notice to end tenancy for landlord's use; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's Advocate. The Landlord and Tenant provided affirmed testimony. I explained how this hearing would proceed and each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord acknowledged receipt of the Tenant's application for Dispute Resolution; the Notice of Hearing document; and the Tenant's evidence. No issues or concerns were raised regarding service or receipt of those documents. As such I accepted the Tenant's submissions as evidence for this proceeding. The Landlord testified he did not submit documentary evidence in response to the Tenant's application.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in **exceptional circumstances**.

Residential Tenancy Policy Guideline 36 provides that the word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something, at the time required, is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I agree with Policy Guideline 36 and find it is applicable in this case. The applicant Tenant bears the burden of proof to establish that there were exceptional circumstances that prevented the Tenant from filing his application within the required timeframes.

The Tenant provided a written submission which indicated he received the 2 Month Notice on April 30, 2016. The Tenant submitted he had a grade eight education and does not read well. He asserted he did not see the section of the 2 Month Notice which indicated he only had 15 days to dispute the Notice.

The Tenant stated he sought the assistance of an advocate approximately one week after receiving the 2 Month Notice. He asserted the advocate had been working with other clients which delayed his access to the advocate. The Tenant argued that after he was able to see the advocate, prepare his application for Dispute Resolution, and obtain the required documents to support his application for a fee waiver, the earliest he could submit his application for Dispute Resolution was Tuesday May 17, 2016; two days after the stipulated timeframe. The Tenant requested more time to make his application due to the aforementioned circumstances.

The Advocate confirmed he had been busy seeing other clients the day the Tenant came to see him. He indicated it was after 4:00 p.m. when he saw the Tenant which did not provide enough time to complete their submissions. The Advocate stated he had the Tenant return to his office the next day to finalize their submissions.

Upon review of the Tenant's written submissions, as outlined above, the Landlord argued the handwriting on the application for Dispute Resolution was the Tenant's handwriting which he asserted was proof the Tenant was a "smart guy". The Landlord submitted the Tenant knew there was an advocate in town within a short walking distance so the Tenant should not have waited a week before seeking the Advocate's assistance.

The Landlord testified he had told the Tenant verbally that he had to move out and it was the Tenant who requested the eviction notice to be in writing. The Landlord argued the Tenant made a choice to go out fishing and delayed a full week before seeking assistance from the Advocate to dispute the 2 Month Notice so he should not be granted more time to file the application.

Upon consideration of submissions from both parties, and notwithstanding the Tenant delaying one week before seeking assistance, I find there was sufficient evidence to prove there were exceptional circumstances which prevented the Tenant from filing his application for Dispute Resolution within the stipulated 15 day period. I make this finding in part after consideration of the following: the Tenant was not able to read well due to his limited education; the Tenant had to wait to receive assistance from an advocate; the Tenant was required to gather additional documentation to complete the fee waiver documents; and the validity of the Notice was called into question by the Advocate due to errors on the 2 Month Notice with spelling the Tenant's first name, the Tenant's

telephone number; and the postal code; which occurred before filing his application for Dispute Resolution.

As per the foregoing, I granted the Tenant's request for more time to file his application to dispute the 2 Month Notice to end tenancy issued April 29, 2016. Accordingly, I proceeded to hear the submissions from both parties relating to the aforementioned Notice.

Issue(s) to be Decided

1. Should the 2 Month Notice to end tenancy issued April 29, 2016 be upheld or cancelled?

Background and Evidence

The Tenant testified he did not enter into a written tenancy agreement. He stated he used to live with his mother and niece in the upper level of the house. He asserted rent was $500.00 when he was living with his mother and niece. The Tenant submitted when he started living by himself, in approximately 2010, his rent was dropped to $400.00 per month. The Tenant said he recalled paying $250.00 as a security deposit; however, he did not receive a receipt for that payment.

The Landlord testified the rental unit was a house with two self-contained rental units. The upper floor was a two bedroom suite rented separately from the basement which was a self-contained one bedroom suite. The Landlord submitted the Tenant's mother rented the upper level two bedroom suite back in approximately 2005 for $500.00 per month and it was the Tenant's mother who paid the security deposit of $250.00. The Landlord asserted the Tenant moved into the basement suite sometime in 2006, at which time his rent was reduced to $400.00 per month because it was only a 1 bedroom unit. The Landlord argued the Tenant did not pay a security deposit for the lower suite.

The Landlord spoke with an accent. Throughout his submissions I had to ask the Landlord to repeat his statement so I could understand what he had stated.

The Landlord submitted he had evicted all of the Tenants living in the rental house because his son and his son's girlfriend were coming back from another country at the end of June 2016 and they will be occupying the entire house. He asserted his son did not want to have renters in the downstairs. The Landlord testified he initially told the Tenant verbally that he would have to move out and later served him a written 2 Month Notice. The Landlord stated the upstairs tenants, a male and female, were also given a notice to end tenancy and they were moving out at the end of June 2016.
A copy of the 2 Month Notice to end tenancy was submitted into evidence. That 2 Month Notice listed the following: an issue date of April 29, 2016 with an effective date of June 30, 2016. On page 2 of that Notice, it stated in part, as follows:

REASON FOR THIS 2 MONTH NOTICE TO END TENANCY

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

INFORMATION FOR BOTH LANDLORDS AND TENANTS

…An error in this Notice or an incorrect move-out date on this Notice does not make it invalid. An arbitrator can order that the tenancy ends on a date other than the date specified in this Notice.

[Reproduced as written]

The Landlord confirmed there were the following typing errors on the 2 Month Notice issued April 29, 2016: the Tenant's first name was spelled incorrectly; an incorrect telephone number was listed on the Notice; and an incorrect postal code was listed on the Notice. The Landlord asserted the 2 Month Notice should not be considered invalid due to these errors because the Tenant knew the 2 Month Notice was intended for him. The Landlord argued he had initially issued the Tenant a verbal notice to end tenancy and it was the Tenant who requested the notice be issued in writing. The Landlord stated he then issued the written notice to end tenancy and personally handed it to the Tenant so there was no doubt the Tenant knew the Notice was intended for him.

The Landlord asserted the errors on the 2 Month Notice should be "immaterial" because the Tenant said he could not read and the Notice was personally handed to the Tenant by the Landlord. The Landlord noted the Tenant's first name was an uncommon name and the spelling used by the Landlord does not change the way that name is said. The Tenant's first name is spelled with one "r" before the "y" and the Landlord had typed it listing two "r's" before the "y".

The Landlord argued the Tenant always filled out the rent receipts for the Landlord or his wife to sign so they had never written the Tenant's name before issuing the 2 Month Notice. The Landlord asserted the errors were honest mistakes because the Tenant's first name was not a common first name; the majority of the telephone numbers in that small city have a different prefix; and the Landlord mistakenly wrote his own postal code instead of the postal code for the rental unit.

The Landlord stated when he purchased the property it was a single lot. He said approximately 15 years ago he purchased the lane access from the city creating two lots. The Landlord testified the second lot was vacant and would be used as a parking lot for their business vehicles. He stated his son and son's girlfriend will be living upstairs and will be using the downstairs as their business office. Once they have vacant possession they plan to move all of the company vehicles to the vacant lot instead of having them parked all over town at different locations.

The Landlord testified he owns his current residence and the one rental property. He stated he did not own any other property in that city. He submitted he and his wife have lived in the city since 1970 and their two children were born and raised there. The Landlord asserted his son had been living in another country and has decided to return to their home town. As a result, the Landlord said he needs to have vacant possession of the rental unit so his son has a place to reside.

The Tenant submitted he did not think the Landlord nor the Landlord's family member intended to live in the rental unit. Rather, the Tenant was of the opinion the Landlord wanted to evict him so he could increase the rent as the Tenant's current rent was "incredibly inexpensive" for the current rental market.

The Tenant submitted copies of other Dispute Resolution Decisions where other Arbitrators had found Notices to be invalid where names were spelled incorrectly. As such, the Advocate argued this 2 Month Notice should automatically be cancelled. He noted the Landlord served the Tenant a second 2 Month Notice for which they have another hearing scheduled to dispute that second Notice.

The Advocate argued there was a zero vacancy rate in their city which will cause the Tenant to be homeless if he is evicted. He argued that if the upstairs is a 2 bedroom unit that was currently occupied by a male and female tenant then the Landlord's son and his son's girlfriend should be able to occupy the upstairs 2 bedroom suite so there would be no reason to evict the downstairs Tenant.

In closing, the Landlord argued his son does not want any rentals. They intend to use the downstairs suite as "storage" and as an "office" for their business. The Landlord argued they needed all the tenants to move out so they could use the vacant lot as a private parking lot.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 64(2) of the *Act* stipulates the director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Section 52 of the *Act* provides, in order to be effective, a notice to end a tenancy must be in writing and must be: signed and dated by the landlord or tenant giving the notice; give the address of the rental unit; state the effective date of the notice; except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy; and when given by a landlord, be in the approved form.

Residential Tenancy Policy Guideline 11 (Policy Guideline 11) stipulates the Legislation allows an arbitrator, on application, to amend a Notice to End Tenancy where the person receiving the notice knew, or should have known, the information that was omitted, or listed incorrectly on the notice, and it is reasonable in the circumstances.

In determining if a person "should have known" particular facts, an arbitrator will consider whether a reasonable person would have known these facts in the same circumstances. In determining whether it is "reasonable in the circumstances" an arbitrator will look at all of the facts and consider, in particular, if one party would be unfairly prejudiced by amending the notice.

I concur with Policy Guideline 11 and, pursuant to section 62 of the *Act;* I find Policy Guideline 11 is relevant to the matters currently before me.

Notwithstanding the Tenant's arguments that the 2 Month Notice issued April 29, 2016 is automatically invalid due to the spelling errors as determined in other unrelated RTB Decisions; and based on the merits of the matters currently before me; I conclude that this Decision is not bound by those unrelated RTB Decisions submitted by the Tenant, pursuant to section 64 of the *Act.*

In addition, I favored the Landlord's submissions regarding the effectiveness of the 2 Month Notice issued April 29, 2016. Specifically, I find it reasonable that the Tenant would have known the 2 Month Notice was intended for him as per the undisputed evidence that the Tenant requested the Notice be served upon him in writing and that written Notice was later served personally upon the Tenant by the Landlord.

I do not find there was sufficient evidence to prove the Tenant doubted the effectiveness of the 2 Month Notice due to the presence of an additional "r" in the Tenant's first name; the incorrect postal code; or the incorrect telephone prefix; causing him to ignore the notice for one week before seeking the assistance of the Advocate.

I favored the Landlord's submissions, in part, because by the Tenant's own submission the Tenant argued he suffered **exceptional circumstances** which were the result of his inability to read well. I also considered the fact that English was a second language for the Landlord which may have contributed to the typing errors. Based on the Tenant's actions to seek assistance from an advocate to help him dispute the 2 Month Notice, I have no doubt the Tenant knew the 2 Month Notice to end tenancy was issued to him personally; regarding his occupation of the rental unit; despite the typing errors. Furthermore, I find it would be prejudicial to the Landlord to have accepted the Tenant's reasons as being exceptional circumstances for filing his application for Dispute Resolution late and not to consider the Landlord's situation with English as a second language. Accordingly, I order the typing errors on the 2 Month Notice issued April 29, 2016 not to be fatal to the Notice, pursuant to section 62 of the *Act.* I now turn my mind to determine whether there was sufficient evidence to uphold the reasons the 2 Month Notice was issued April 29, 2016.

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The *Residential Tenancy Policy Guideline # 2* sets out the two part test for the "good faith" requirement as follows:

1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and

2) the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

When a tenant disputes a notice to end tenancy, the landlord bears the burden of proving that there are grounds to end the tenancy and for this type of notice to end tenancy, must also prove that the Notice was given in good faith, which requires that there be no ulterior motive for ending the tenancy.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

In this case the Landlord did not submit documentary evidence to support his reasons for issuing the 2 Month Notice. The Landlord initially argued that his son and son's girlfriend were currently residing in another country and would be returning at the end of June 2016 to occupy the entire rental unit. The Landlord then stated that his son and son's girlfriend would be residing in the upper suite and the Tenant's suite would be occupied or used as the Landlord's business office and storage. In addition, the Landlord indicated they would be parking their business vehicles in the vacant lot beside the rental unit.

After consideration of the Landlord's submissions, and in consideration of the Tenant's submissions that his monthly rent is below market value, I find the Landlord submitted insufficient evidence to prove the Tenant was served the 2 Month Notice on April 29, 2016 for the reason that the Tenant's rental unit would be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse). I make this finding in part because by the Landlord's own submission the intended use of the Tenant's rental unit was not for his son and son's girlfriend to occupy. Rather, the Landlord made it very clear that his son did not want renters in the house and the Landlord had an ulterior motive to end the tenancy as he intended to have the Tenant's rental unit occupied by the Landlord's business office, a completely different reason than what is stated on the 2 Month Notice.

Based on the totality of the evidence before me I find the Landlord submitted insufficient to prove the reason for issuing the 2 Month Notice to end tenancy issued April 29, 2016. Accordingly, I uphold the Tenant's application and I Order the 2 Month Notice issued April 29, 2016 cancelled and it is of no force or effect.

The Tenant filed his application seeking to recover the cost of the filing fee. In this case the Tenant was granted a fee waiver and did not pay the filing fee. Accordingly, I dismiss the Tenant's request to recover the filing fee, without leave to reapply.

Conclusion

The Tenant was successful with his application and the 2 Month Notice issued April 29, 2016 was cancelled.

This decision is final, legally binding, and 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: June 21, 2016

Residential Tenancy Branch