



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, DRI, CNL, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to dispute a rent increase; more time to cancel a notice to end tenancy; and to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and her partner.

The tenant testified the landlord's onsite manager was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on June 2, 2016 in accordance with Section 89.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*.

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 to dispute a rent increase. 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 other 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 claim disputing a rent increase. I grant the tenant leave to re-apply for this other claim.

I note that Section 55 of the *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*.

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; to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 66, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlords Use of Property it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The tenant submitted that the tenancy began on June 1, 2007 as a month to month tenancy for the current monthly rent of \$982.00 due on the 1st of each month with a security deposit of \$450.00 and a pet damage deposit of \$150.00 paid.

The tenant submitted into evidence the following relevant documents:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 11, 2016 with an effective vacancy date of June 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; and
- A copy of a handwritten agreement dated April 14, 2016 that states the tenant will move out of her rental unit on June 30, 2016 into a vacant apartment and that once renovations are completed she will move back into the subject rental unit. This agreement is signed by two parties.

The tenant submitted that when she received the 2 Month Notice she entered into the above noted handwritten agreement with the onsite manager and was of the impression that the 2 Month Notice would have been cancelled.

The tenant stated that it was until much later that she was informed by the onsite manager that the landlord was not willing to accept the agreement entered into by her and the onsite manager. She stated that she made several attempts at contacting the property management company headquarters but that her calls were never returned.

Analysis

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.

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 find, from the tenant's undisputed testimony, that the landlord's actions lead the tenant to believe that the 2 Month Notice was cancelled. As such, I accept that it was not until the tenant could not get a response to repeated enquiries to the property management headquarters that she determined she must submit an Application seeking to cancel the 2 Month Notice.

I find that these are exceptional circumstances and provide strong and compelling reasons for not submitting her Application for Dispute Resolution within the required 15 days after receipt of the 2 Month Notice. As such, I grant the tenant is entitled to more time to submit her Application for Dispute Resolution.

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 renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

In the case before me, I find the landlord has provided no evidence nor has the landlord attended this hearing to present their Notice to End Tenancy or testimony regarding why it was issued. As a result, I order the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on April 11, 2016 is cancelled.

Conclusion

Based on the above, I grant the tenant's Application and order that the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a) in satisfaction of this claim.

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 04, 2016

Residential Tenancy Branch