



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL, MNDC, OLC, FF

Introduction

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

- more time to make an application to cancel the landlord's notice to end tenancy, pursuant to section 66;
- cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, GT ("landlord") and the tenant, KG ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to speak on behalf of both landlords named in this application, as an agent at this hearing (collectively "landlords"). The tenant confirmed that she had authority to speak on behalf of her husband, "tenant RR," the other tenant named in this application, as an agent at this hearing (collectively "tenants").

This hearing lasted approximately 82 minutes in order to allow both parties to fully present their submissions, particularly the tenant who spoke during most of the hearing time. The hearing was also lengthened by the tenant's repeated interruptions and inappropriate behaviour.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

At the outset of the hearing, I advised both parties that one person was to speak at any given time, that they were not to interrupt while others were talking, and that they would be given a chance to speak. Throughout the hearing, the tenant repeatedly interrupted me, yelled at me and made inappropriate comments. The tenant displayed rude, hostile, disrespectful and inappropriate behaviour. I repeatedly warned the tenant to stop her inappropriate behaviour but she continued. Although I had the ability to disconnect the tenant from the teleconference and continue in her absence, I allowed the tenant to attend the full hearing in order to present the tenants' application and respond to the landlord's submissions.

I caution the tenant not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and she may be excluded from future hearings.

Preliminary Issue – Amendments to Tenants' Application

At the outset of the hearing, both parties confirmed that the landlord did not issue any notices to end tenancy to the tenants, including a 2 Month Notice. Accordingly, the tenants' application for more time to cancel a notice to end tenancy and to cancel a 2 Month Notice, are dismissed without leave to reapply.

During the hearing, the tenant confirmed that she did not want to pursue the tenants' application for a monetary order of \$2,200.00 for a loss of quiet enjoyment and a loss of

wages. I notified her that the tenants would not be permitted to reapply for this relief at a later date, because they had already made the application for this hearing with notice to the landlord who was ready to proceed with the claim at this hearing. The tenant said that she understood and agreed to the above. Accordingly, this portion of the tenants' application is dismissed without leave to reapply.

During the hearing, the tenant stated that if the landlord was required to provide the tenants with a 2 Month Notice to vacate, the tenants were entitled to one month's rent compensation of \$2,200.00. The landlord did not issue a 2 Month Notice to the tenants, as noted above. The landlord stated that she did not intend to issue a 2 Month Notice because the parties signed a fixed term tenancy agreement requiring the tenants to vacate. Accordingly, this portion of the tenants' application is dismissed without leave to reapply.

The tenant confirmed that the tenants' application for an order requiring the landlord to comply with the tenancy agreement, was regarding a declaration as to whether this tenancy continues or ends, as per the parties' written tenancy agreement.

Issues to be Decided

Does this tenancy continue or end, as per the parties' written tenancy agreement?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 15, 2015 for a fixed term ending on September 30, 2016. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid by the tenants and the landlord continues to retain both deposits.

A copy of the signed written tenancy agreement was provided for this hearing. The landlord said that she drafted it and it was not on an RTB form. The parties disagree as

to whether the tenancy continues after the end of the fixed term on September 30, 2016.

The tenants seek an order for the landlord to comply with the tenancy agreement in allowing them to renew their tenancy agreement for another fixed term or to allow the tenants to provide two months' notice to the landlord by September 30, 2016 to vacate by November 30, 2016.

The tenant stated that the landlord was looking for long term tenants, not a month-to-month tenancy, when the tenants signed the written tenancy agreement. The tenant said that the provision in the written tenancy agreement regarding what happens at the end of the fixed term is unclear. The provision states as follows (emphasis in original):

This tenancy starts on: September 15, 2013 and ends on September 30, 2016 for a fixed length of time.

this is a fixed term tenancy, the Tenant will vacate the premises upon the expiration of the term unless the Tenant contacts the Landlord in writing prior to **July 31, 2016** to renegotiate a new fixed term tenancy, at the landlord's option, or to provide the Landlord with no less than 2 (two) full calendar months notice of their intention to vacate the premises upon the expiration date of the current lease. The Tenant understands and agrees that s. 44 (3) of the Residential Tenancy Act, which allows a fixed term tenancy to lapse into a month to month tenancy, does not apply to this Tenancy Agreement.

The tenant said that she understood the above provision to say two things: 1) that the parties can negotiate a new fixed term at the landlord's option by July 31, 2016 or 2) the tenants were required to give no less than two months' notice on September 30, 2016 to leave by November 30, 2016. The tenant stated that there were problems with noise at the rental unit and surrounding areas and the landlord said that the tenants had to move so there were no discussions about renewing the fixed term. The tenant said that the second option can still be exercised by the tenants by September 30, 2016.

The landlord said that the above provision is clear. She stated that the tenants were required to provide written notice by July 31, 2016, to exercise two options: 1) renew the fixed term lease at the landlord's option or 2) provide two months' notice to leave by September 30, 2016. The landlord said that she explained the above provision to the tenants when they both signed the written tenancy agreement. The landlord further stated that she sent an email to the tenants on June 13, 2016, prior to the July 31, 2016

deadline, telling them that the landlord would not be renewing their lease and advising them that their tenancy would be ending on September 30, 2016.

Analysis

Section 44(1)(b) states the following:

- (1) A tenancy ends only if one or more of the following applies:*
...*(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.*

The landlord and the two tenants signed the entire written tenancy agreement. The landlord and the two tenants also initialled each page of the agreement, including page 1, regarding the fixed term provision. Both parties agreed that the fixed term provision was explained by the landlord to the tenants at the time that they signed the agreement. The landlord is not required to explain the provisions of the tenancy agreement to the tenants. The tenants are required to read and inform themselves and only sign and initial each page of the agreement if they agree with all of the provisions.

I find that the written tenancy agreement requires the tenants to vacate the rental unit by September 30, 2016, the end of the fixed term period, if two options are not exercised prior to July 31, 2016. Neither option was exercised by the tenants by the deadline of July 31, 2016: 1) to propose a fixed term renewal that could be accepted at the landlord's discretion or 2) to provide two months' notice to leave by September 30, 2016. The tenancy agreement is clear that if the tenants do not exercise the two options, they are required to "vacate the premises upon the expiration of the term" which is stated as "ends on September 30, 2016."

Further, the landlord provided the tenants with verbal notice as well as an email on June 13, 2016, well before the deadline of July 31, 2016, clearly stating that the tenants had to move out at the end of the fixed term. The landlord's email states as follows (emphasis in original):

I hereby put in writing as confirmation to inform you that the owner **will not renew** the current lease, and your tenancy officially ends on the expiration date written on the first page of the tenancy agreement: **September 30, 2016**.

The tenant said that the above email meant that she could give notice on September 30, 2016 to leave by November 30, 2016. I disagree. I find that the above statement is clear and written in bold, indicating that the tenancy ends on September 30, 2016.

Accordingly, I find that as per the terms of the written tenancy agreement, this tenancy ends on September 30, 2016. The tenants and any other occupants are required to vacate the rental unit by no later than 1:00 p.m. on September 30, 2016.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

This tenancy ends on September 30, 2016. The tenants and any other occupants are required to vacate the rental unit by no later than 1:00 p.m. on September 30, 2016.

The tenants' entire application is dismissed without leave to reapply.

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: September 6, 2016

Residential Tenancy Branch