



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") indicating that the tenants sought to cancel the landlord's 2 Month Notice to End Tenancy because the tenants cease to qualify for rental unit pursuant to section 49.1.

Both parties (one tenant, the landlord and the landlord's assistant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenant's Application for Dispute Resolution as well as an evidence package submitted for this hearing. The tenant in attendance at this hearing confirmed receipt of an evidence package submitted by the landlord for this hearing.

Preliminary Issue

While the tenant applied to dispute a 2 Month Notice to End Tenancy, I was not supplied evidence that the landlord issued a 2 Month Notice to End Tenancy. The landlord testified that she sought to end the tenancy because the tenants' pet has harmed other pets on the premises. Neither party submitted a copy of the notice to end tenancy with respect to this matter: it was unclear whether a formal written notice to end tenancy had been issued at all.

As evidence for this hearing, the landlord submitted; an email from another tenant to complain about the tenant's dog attacking her dog; a veterinary bill from that other tenant; and photographs of a dog with wounds on its body. The landlord testified that she has received complaints from various other residents in the rental premises and that she has provided the tenant with warning letters with respect to his dog.

Section 44 of the Act describes the ways in which a tenancy may end,

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

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

(i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;

(ii) section 46 *[landlord's notice: non-payment of rent]*;

(iii) section 47 *[landlord's notice: cause]*;

(iv) section 48 *[landlord's notice: end of employment]*;

(v) section 49 *[landlord's notice: landlord's use of property]*;

(vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;

(vii) section 50 *[tenant may end tenancy early]*;

(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;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

A 2 Month Notice to End Tenancy may be issued when the unit is going to be used by the landlord (section 49 of the Act) or when the tenant no longer qualifies for an existing subsidy (pursuant to section 49.1 of the Act). Based on the testimony at this hearing by both parties, neither section 49 or 49.1 of the Act are applicable to this situation.

Section 52 of the Act provides the requirements in form and content of a notice to end tenancy in order for the notice to be effective. A notice to end tenancy must be in writing, be signed and dated by the party giving notice, including the address of the rental unit and the effective date of the notice. There is no evidence before me to indicate whether any notice to end tenancy that may have been issued to the tenant was issued in compliance with section 52 of the Act.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. In this case, the applicant/tenant has failed to provide enough information to know the applicant's case so that the respondent/landlord can meaningfully respond.

In most circumstances, when a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. In this case, the landlord has not provided a copy of the notice to end tenancy upon which she relies to obtain an Order of Possession.

Given the lack of clear evidence to substantiate the tenant's application or evidence to support the landlord's claim that this tenancy should end, I make no findings of fact and I dismiss this application.

Conclusion

I dismiss the tenant's application in its entirety.

I decline to issue an Order of Possession in accordance with section 55 as the landlord has failed to provide sufficient evidence to prove she served a valid notice to end tenancy.

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 26, 2017

Residential Tenancy Branch