



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, OPC, OPL, RR, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

On September 8,, 2017, the Tenant applied for more time to make an application to cancel a notice to end tenancy; to cancel a 1 Month Notice To End Tenancy For Cause; and for a rent reduction to deduct the cost of repairs, services or facilities from the rent. On November 21, 2017, the Tenant amended her application to include the cancellation of a 2 Month Notice To End Tenancy For Landlord's Use Of Property.

On September 15, 2017, the Landlord applied requesting an order of possession based on issuance of a 1 Month Notice To End Tenancy For Cause and to recover the cost of the application fee. On November 29, 2017, the Landlord amended her application to include a request for an order of possession based on the issuance of a 2 Month Notice To End Tenancy For Landlord's Use Of Property.

The Tenant and Landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence that is before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties were offered an opportunity to settle the matter pursuant to section 63 of the Act; however, a settlement agreement could not be reached.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator to dismiss issues with or without leave to reapply.

The Tenant's Application includes a request for a reduction of rent due to restriction of a service. The Landlord's Application includes a request for a monetary order in the amount of \$313.99 regarding a cable box.

I find that the most important issues to deal with during this hearing are the notices to end tenancy, and whether or not the tenancy will continue. Therefore, I will deal with the Tenant's request to cancel the notices to end tenancy and I dismiss the balance of the Tenant's and Landlord's claims with liberty to re-apply.

Issues to be Decided

- Should the Tenant be granted more time to dispute the 1 Month Notice To End Tenancy For Cause?
- Does the Landlord have sufficient cause to end the tenancy?
- Should the 2 Month Notice To End Tenancy For Landlord's Use Of Property be cancelled?

Background and Evidence

The parties testified that the tenancy commenced on April 29, 2017, as a month to month tenancy. Rent in the amount of \$1,000.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$500.00 to the Landlord.

On July 19, 2017, the Landlord testified that she issued the Tenant a 1 Month Notice To End Tenancy For Cause ("the 1 Month Notice"). The Landlord testified that the 1 Month Notice contains an error regarding the date she signed the Notice. She testified that the Notice indicates it was signed on August 19, 2017, when in fact, she signed it a month earlier on July 19, 2017, and served it to the Tenant on the same date.

The Tenant confirmed that she received the 1 Month Notice from the Landlord on July 19, 2017.

On November 17, 2017, the Landlord testified that she issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property ("the 2 Month Notice").

The Tenant confirmed that she received the 2 Month Notice on November 20, 2017.

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit or vacate the site by the effective date set out on page 1 of the Notice.

The Tenant disputed the 1 Month Notice on September 8, 2017.

The Tenant's Application includes a request for more time to to make an application to cancel a notice to end tenancy. The Tenant was asked to provide reasons why she did not dispute the 1 Month Notice within 10 days of receiving the Notice. The Tenant testified that she believed that the 1 Month Notice was defective because of the incorrect date that the Landlord signed the Notice. She also submitted that the effective date of the 1 Month Notice was also incorrect.

With respect to the form and content of a notice to end tenancy, section 52 of the Act states that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Analysis

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The Act provides that incorrect effective dates within a Notice are automatically corrected. Section 53 of the Act provides:

If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Section 47(5) of the Act states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Based on the evidence and testimony before me I make the following findings:

Pursuant to section 53 of the Act, I find that the effective date on the 1 Month Notice was not earlier than the earliest date that complies with the section. The earliest effective date of the Notice would be August 31, 2017. The Landlord gave the Tenant an effective date of September 31, 2017, which is a month longer than required by the Act. I find that the incorrect effective date in the Notice provided the Tenant more time to vacate the unit than is required by the Act, and therefore the effective date is not prejudicial to the Tenant.

I find that the 1 Month Notice that was received by the Tenant was signed and dated by the Landlord. While I accept that the signature date was incorrect, I find that the error does not render the 1 Month Notice to be invalid. The Tenant was aware of the date that she received the 1 Month Notice. I find that if the Tenant did not want to accept the Notice and move out of the rental unit on the effective date, she was required to dispute the Notice within 10 days.

The Tenant disputed the 1 Month Notice on September 8, 2017. Section 66 of the Act specifically states that the director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice. The effective date of the 1 Month Notice is September 31, 2017. I find that the Tenants request for an extension of time to dispute the 1 Month Notice was made beyond the effective date of the 1 Month Notice. The Tenant's request for more time to make an application to cancel a notice to end tenancy is dismissed.

I find that the Landlord is entitled to an order of possession of the rental unit, pursuant to section 55 of the Act. I grant the Landlord an order of possession effective at 1:00 pm on December 31, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I order that the Landlord can keep the amount of \$100.00 from the Tenant's security deposit in satisfaction of this claim.

Since the tenancy is ending based on the 1 Month Notice To End Tenancy For Cause, there is no need to consider whether the tenancy is ending based on the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated November 17, 2017.

Conclusion

The Tenant received a 1 Month Notice To End Tenancy For Cause and did not file to dispute the Notice. The Tenant's application requesting more time to dispute the Notice was made beyond the effective date of the 1 Month Notice and is dismissed. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective at 1:00 pm on December 31, 2017, after service on the Tenant, and I order that the Landlord can keep \$100.00 from the Tenant's security deposit to pay for the filing fee.

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: December 05, 2017

Residential Tenancy Branch