



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, OLC, OPB, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on September 1, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order in relation to a rent increase - Section 43;
3. An Order for the Landlord’s compliance - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 1, 2017 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to its cancellation?

Is the Tenant entitled to a rent refund?

Is the Tenant entitled to an order that the Landlord comply?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Are the Parties entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started in April of 2003. The original rent of \$1,400.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. To date the Parties have entered into several successive fixed term tenancies with the latest agreement signed on May 31, 2017 for a rental amount of \$1,600.00. On August 22, 2017 the Landlord served the Tenants in person with a two month notice to end tenancy for landlord's use (the "Notice"). The Notice does not set out any reason for the tenancy being ended.

The Tenant states that before the Landlord served them with the Notice the Landlords told them that they were planning on taking over the unit and then selling it. The Tenant asks for an order that the Landlord comply with the Act to end the tenancy once the unit is sold and the purchaser asks to end the tenancy. The Landlord states that the owners have no intention to sell the unit and that the owners are currently renting a basement suite and want to move back into the unit to reside there.

The Landlord states that the last tenancy agreement requires the Tenants to move out of the rental unit as the tenancy agreement provides that the tenancy ends at the fixed term end date of October 31, 2017. The Landlord states that they are not willing to enter into another tenancy agreement. The Tenant states that the notation on the latest tenancy agreement indicating that the tenancy ends on the fixed term date was not present at signing and that the Landlord inserted this after signing without the Tenant's knowledge or consent. The Tenant states that they have never agreed to move out of the unit at the end of the tenancy.

The Tenant states that the Landlord never gave them any notice of rent increases and arbitrarily increased the amount without the Tenant's agreement. The Tenant states

that although they signed tenancy agreements indicating an increase in the rental amount, the Tenant states that they did this without knowing that the Landlord was restricted in the amount that could be increased. The Tenant states that they only discovered the rent increase regulation when they spoke with the RTB for the first time in their tenancy in relation to the Notice. The Tenant states that they were not pressured or coerced into signing any of the tenancy agreements but feel they were unfairly presented to them for signing without any choice or discussion. The Landlord states that the rent increases were discussed with the Tenants and that the Tenants always agreed to the rent increases with the new tenancy agreements.

The Parties agree that no rents have been paid for November 2017 and that the rent for October 2017 was not paid on the basis that this would be the compensation required had the Notice been effective. The Tenant states that she has the rent for October and November 2017 and that she has just been waiting for the outcome of this hearing. The Tenant states that she also called the Landlord to inform him that they were willing to pay the rent for October and November 2017 but that the Landlord did not return the calls. The Tenant agrees to pay the outstanding rent immediately. The Landlord states that the Tenant knows where to deliver the rent as has been done over the length of the tenancy and should pay the rent as due.

Analysis

Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must, inter alia, state the grounds for ending the tenancy. As the Notice does not state any reason for ending the tenancy I find that the Notice is not effective in ending the tenancy, the Tenants are entitled to its cancellation.

Section 44(3) of the Act provides that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to

month tenancy on the same terms. As there is no requirement for the Tenants to move out of the unit at the end of the fixed term and as no new tenancy agreement was entered into I find that the tenancy continued on a month to month at the end of the fixed term. As a result I find that the Landlord is not entitled to an order of possession and I dismiss this claim. The tenancy continues.

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. As the Tenant freely signed fresh or new tenancy agreements on each instance I find that the rent provisions do not apply to the amount of rent agreed to by the Tenants. As each tenancy agreement was new and freely signed I do not consider that the Tenants contracted out the Act by signing new agreements. As a result I find that the Tenants have not substantiated that they paid more rent than agreed to under the terms of any of the tenancy agreements or that the Landlord did not follow the Act in relation to rent increases. I therefore dismiss claim for an order in relation to a rent increase.

Since the tenancy is continuing and as the Landlord has a continuing right to end a tenancy for landlord's use, the Landlord remains at liberty to serve a notice to end tenancy for landlord's use just as the Tenant remains at liberty to dispute such a notice. As the Notice that was disputed was found to be ineffective due to no reason being stated and as there is no evidence that the Landlord acted out of compliance with the Act by serving the Notice, I find that the Tenant has not substantiated an entitlement to an order that the Landlord comply with the Act. The Landlord is directed to the Act to determine its rights and obligations and I caution the Landlord to act in compliance with the sections of the Act that allow a landlord to end a tenancy.

Given the Tenant's agreement to pay the outstanding rents immediately, I dismiss the Landlord's claim for November 2017 rent with leave to reapply if the rent is not paid. Since the Tenants had valid claims in relation to the Notice and the Landlord had a valid

claim in relation to rent I find that they are both entitled to recovery of their filing fees. I set these fees off against each other to result in a zero balance owed to either Party.

Conclusion

The Notice is cancelled and the tenancy continues.

The Landlord's claim for unpaid rent is dismissed with 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: December 1, 2017

Residential Tenancy Branch