



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MT, CNL, OLC, DRI

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The matter was set for a conference call hearing.

On March 20, 2018, the Landlords applied requesting an order of possession based on the issuance of a 2 Month Notice To End Tenancy For Landlord’s Use Of Property.

On April 18, 2018, the Tenant applied for more time to make an application to cancel a 2 Month Notice To End Tenancy For Landlord’s Use Of Property. The Tenant also applied to dispute a rent increase and for an order that the Landlord comply with the Act.

The Tenant and Landlord attended the hearing. The Tenant called into the hearing nine minutes late. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

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 Tenant stated she wants to pursue a claim for compensation against the Landlord due to a loss of quiet enjoyment she suffered due to noise at the rental property. Since the Tenant’s Application did not include this claim it will not be heard at this hearing. The Tenant is granted leave make application for dispute resolution to apply for compensation against the Landlord for a loss of quiet enjoyment.

Issues to be Decided

- Should the Tenant be granted more time to dispute the 2 Month Notice To End Tenancy For Landlord’s Use Of Property?
- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy commenced approximately 12 years prior and was a month to month tenancy. The Landlord purchased the property in October 2017. Rent in the amount of \$458.00 is due to be paid to the Landlord each month. The Tenant paid a security deposit of \$175.00 to the Landlord.

The Landlord issued the Tenant a 2 Month Notice dated February 27, 2018. The reason for ending the tenancy in the Notice states:

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.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that she received the 2 Month Notice from the Landlord on February 27, 2018. The Tenant disputed the 2 Month Notice on April 18, 2018; 50 days after receiving the Notice.

The Tenant requested 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 2 Month Notice within 15 days of receiving the Notice.

The Tenant testified that she does not know why she did not dispute the 2 Month Notice. She stated that she did not know that there was a dispute period.

The Landlord testified that the Tenant accepted one free month's rent in compensation for the 2 Month Notice and moved out of the rental unit on April 30, 2018. The Landlord returned the Tenant's security deposit to the Tenant on April 30, 2018. Since the Tenant has moved out of the rental unit the Landlord no longer requires an order of possession.

The Tenant confirmed that she accepted one month rent in compensation and moved out of the rental unit.

The Tenant testified that she understood that the Landlord is required to allow her to move back into the rental unit at the same monthly rent.

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.

Residential Tenancy Policy Guideline # 36 provides information to determine what qualifies as exceptional circumstances:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I have considered the Tenant's explanation for why she made a late application. I find her explanation that she did not realize that there is a dispute period is not an exceptional circumstance. The 2 Month Notice provides clear information on the time limits and the conclusive presumption that the tenancy ends if the Notice is not disputed within 15 days.

After considering the evidence before me, I dismiss the Tenant's request for more time to make an application to dispute the 2 Month Notice. The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 27, 2018 is dismissed.

Under section 55 of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2 Month Notice issued by the Landlord complies with the requirements for form and content. The Landlord is entitled to an order of possession effective two (2) days after service on the Tenant. However, I find that the tenancy ended when the Tenant moved out of the rental unit on April 30, 2018. The Landlord is entitled to an order of possession but he has waived his right to receive it since the Tenant has already moved out.

I find that the Landlord is not obligated under the *Act* to offer the rental unit to the Tenant at the same monthly rent.

Effective May 17, 2017, changes to the *Residential Tenancy Act* came into force that entitle a Tenant to a right of first refusal to enter into a new tenancy agreement at a rent determined by the Landlord, if the Landlord ends their tenancy to renovate or repair the rental unit.

In the situation before me, the 2 Month Notice To End Tenancy For Landlord's Use Of Property was issued prior the changes to the Act, and there is no entitlement to the Tenant for a first right of refusal.

Conclusion

I dismiss the Tenant's request for more time to make an application to dispute the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 27, 2018. The Tenant's Application to cancel the 2 Month Notice is dismissed.

I find that the tenancy ended when the Tenant accepted a free month's rent and moved out of the rental unit on April 30, 2018.

The Landlord is not obligated under the *Act* to offer the rental unit to the Tenant.

The Tenant is granted leave to make application for dispute resolution to apply for compensation against the Landlord for a loss of quiet enjoyment.

Since the Tenant has moved out, an order of possession for the rental unit has not been issued.

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: June 04, 2018

Residential Tenancy Branch