



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAKOLA HOUSING SERVICE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, MT

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for an order extending the time to file an application disputing the Notice issued by the landlord.

The tenants and the landlord's agent, the current property manager, attended and the hearing process was explained.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

At the outset of the hearing, the parties confirmed receipt of the other's evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-I have determined that the portion of the tenants' application dealing with a request for an order for emergency repairs is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and dismissed that portion, **with leave to reapply**.

Issue(s) to be Decided

Should the tenants be granted more time to apply to cancel the landlord's Notice and, if so, should the Notice be set cancelled?

Background and Evidence

The undisputed evidence of the parties is that this tenancy began on October 1, 2009.

The parties agreed that the landlord served the tenants with the Notice via registered mail, sent on February 22, 2019. The Notice listed an effective end of tenancy date of March 31, 2019. The tenants submitted a copy of the Notice.

The tenants confirmed receiving the Notice on February 27, 2019, and the present application was filed on March 15, 2019.

In support of their request to extend the time to file an application in dispute of the Notice, the tenants submitted that they attempted four separate times to file their application, but had issues with filing the proper paperwork. As a result, they did not file their application within the required ten days of receiving the Notice.

Out of an abundance of caution prior to making a finding on the merits of the tenants' request for an order allowing more time to file an application, I proceeded with submissions from the parties.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing and testified in support of the Notice.

The causes listed on the Notice alleged that the tenants seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk, and that the tenants or persons permitted on the property by the tenants have caused extraordinary damage to the rental unit.

Additionally, on page 2 of the Notice, the section labeled "Details of the Cause(s)" was left blank.

In support of their Notice, the landlord submitted that she first attended the rental unit in February 2019, upon her appointment as the property manager in January 2019. Upon

arrival, she observed that the basement of the rental unit had raw sewage on the floor, seeping into the insulation, and that the tenants had placed boards on top of the sewage to walk through.

The landlord submitted that the tenants failed to report the overflowing plumbing, causing damage to the rental unit. The landlord said that although the tenant TM informed her that he had done so, there were no records that a report was made. Upon inquiry, the landlord confirmed that the septic field was failing and in need of replacement and at this point, only temporary repairs could be made. The landlord stated that the cost of replacement septic field was \$40,000.00 and the landlord was not prepared to pay that cost.

The landlord submitted invoices and work orders showing multiple repairs to the septic field and service visits to the rental unit regarding the septic system, dating back to 2016.

In response, the tenant submitted that he reported the overflowing sewage to the landlord and was informed that each rental unit was on a separate septic field. As such, as the septic fields were failing, the landlord would not be repairing or replacing the septic fields as they were thinking of selling the rental property.

The tenant submitted that he and his family had done everything they could to prevent the overflowing, including limiting showers and laundry and having a friend shovel out the fecal matter.

Analysis

Based on the documentary and oral evidence provided, and on a balance of probabilities, I find the following.

Section 47 of the Act authorizes a landlord to seek to end a tenancy for a variety of reasons by providing a tenant with a notice to end tenancy that complies with section 52 of the Act.

Section 47(4) of the Act provides that a tenant may dispute a Notice under this section

by making an application for dispute resolution within 10 days after the date the tenant receives the Notice. Section 47(4) of the Act states that if a tenant who has received a Notice under this section does not make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the tenant must vacate the rental unit by that date.

On the basis of undisputed evidence, I find that the tenant received the One Month Notice to End Tenancy, dated February 22, 2019, on February 27, 2019. The evidence shows that the tenants did not file this Application for Dispute Resolution until March 15, 2019. As this is more than 10 days after they received the Notice, I find that the tenants did not file their application to dispute the Notice within the timeline established by section 47(4) of the Act.

Section 66(1) of the Act authorizes me to extend the time limit for applying to set aside a Notice to End Tenancy only in exceptional circumstances. The word “exceptional” means that I am unable to extend this time limit for ordinary reasons. The word “exceptional” implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the tenants were hospitalized for an extended period after receiving the Notice.

In my view, not filing the proper paperwork to proceed with the application are not exceptional circumstances and therefore I find that the reasons provided by the tenants for not disputing the Notice within 10 days of receiving it are neither strong nor compelling. I therefore dismiss the tenants’ application for more time to apply to cancel the Notice.

Section 52 of the Act provides that to be effective, a notice to end a tenancy must, among other requirements, state the grounds for ending the tenancy and when given by the landlord, be in the proper form.

In the present case, the landlord failed to complete the “Details of the Cause(s)” portion of the Notice, which instructs the landlord to provide “dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described”. As such, I additionally find the landlord failed to provide the tenant with the particulars of their Notice in order to provide a sufficient and appropriate response. On this basis, I find that the Notice issued by the landlord does not comply with the Act.

I therefore find, pursuant to section 52(a) of the Act, that the One Month Notice to End Tenancy that is the subject of this dispute is not effective. Under section 55(1) of the Act, if I dismiss the tenants' application, I must grant the landlord an order of possession if the Notice to End the Tenancy is in the approved form.

As the Notice to End Tenancy that is the subject of this dispute is not an effective notice, I am therefore unable to grant the landlord an order of possession.

I therefore order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

Conclusion

The tenants' application seeking cancellation of the Notice is granted as I have cancelled the Notice. While I have dismissed the tenant's application, I have also found that the Notice to End the Tenancy was not in the approved form and therefore, I decline to issue an order of possession, pursuant to section 55(1) of the Act.

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: May 9, 2019

Residential Tenancy Branch