



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BY THE BEACH VACATION RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, LRE, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served each of the landlords with the notice of hearing package and first and second of the tenant's documentary evidence packages. The tenant stated that the third documentary evidence package was not served to the landlords. As such, this third package by the tenant shall be excluded from consideration in this decision. Both parties confirmed that each of the named landlords served the tenant with a late documentary evidence package by attaching it to the rental unit door on May 13 and 14th of 2019. The tenant confirmed receipt of these packages, but argued that they were served late, but that there were no issues in responding to these documents as they are just statements of events by each of the named landlords. Both named landlords confirmed that these statements were just a listing of events prior to and on the date of service of the notice on March 31, 2019. I accept this late evidence as both parties have not disclosed an issue in proceeding with the hearing in allowing these documents.

Preliminary Issue(s)

In this case, the tenant seeks an order to cancel the 2 month notice for landlord's use; an order for the landlord to comply and an order to suspend or set conditions on the landlord's right to enter the rental unit.

RTB Rules of Procedure 2.3 states that "if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply." In this regard I find that the tenant has applied for an order to suspend or set conditions on the landlord's right to enter the rental unit. As this section of the tenant's application is unrelated to the main section which is to cancel the notice to end tenancy and an order for the landlord to comply, I dismiss this section of the tenant's claim with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods.

It was clarified with all parties that the tenant's request for an order to comply was in relation to section 51 of the Act in which the landlord is not permitted to issue a 2 month notice to end tenancy when there is a fixed term tenancy.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 month notice?

Is the tenant entitled to an order for the landlord to comply?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

In this case, both parties agreed that a fixed term tenancy exists in which it began on September 1, 2018 and ends on August 31, 2019 with no continuation.

Both parties agreed that on March 31, 2019, the landlord served the tenant with the 2 Month Notice. The 2 Month Notice sets out an effective end of tenancy date of May 31, 2019 and that it was being given as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse).

The landlord and her agent have provided testimony that there have been personal issues as well as incidents that the landlord feels justifies her in ending the tenancy.

Analysis

Section 49 of the Act sets out that a landlord may end a tenancy in respect of a rental unit by serving a notice to end tenancy to the tenant for landlord's use of property.

In this case, both parties have confirmed that the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use of property dated March 31, 2019 by posting it to the rental unit door on March 31, 2019. The 2 month notice provides for an effective end of tenancy date of May 31, 2019 and one reason selected for landlord's use to occupy it.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy by making an application for dispute resolution after the tenant receives the notice.

The tenant has argued that there is a fixed term tenancy ending on August 31, 2019 and that the landlord is not permitted to pre-maturely end the tenancy. The landlords have confirmed that a fixed term tenancy exists.

Section 51 (2) (a) (iii) states in part that if a tenancy agreement is a fixed term tenancy agreement the landlord may not end the tenancy earlier than the date specified as the end of tenancy.

Both parties have confirmed that a fixed term tenancy between these parties ends on August 31, 2019. As such, the tenant's application is granted. The 2 Month Notice dated March 31, 2019 is cancelled. The tenancy shall continue.

I also note for the record based upon the landlords' submissions that a fixed term tenancy may not end by way of a 2 month notice as clarified. The landlords reasons appear to be not related or appropriate in this case regarding a 2 month notice.

Conclusion

The tenant's application is granted. The 2 Month Notice dated March 31, 2019 is cancelled. The tenancy shall continue.

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 21, 2019

Residential Tenancy Branch