



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP (Tenant)
 FFL, MNDL-S, OPL-4M (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their application May 03, 2019 (the “Landlords’ Application”). The Landlords applied as follows:

- For compensation for damage caused to the unit;
- To keep the security deposit;
- For an Order of Possession based on a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit dated November 17, 2018 (the “Notice”); and
- For reimbursement for the filing fee.

The Tenant filed his application May 17, 2019 (the “Tenant’s Application”). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement and for repairs to be made to the rental unit.

The Tenant submitted an amendment to the Application dated May 23, 2019 (the “Amendment”). The Amendment relates to a dispute of a Two Month Notice to End Tenancy.

The Landlords and Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages, Amendment and evidence and no issues arose.

The Tenant confirmed the purpose of the Amendment was to dispute the Notice and not a Two Month Notice to End Tenancy.

Rule 2.3 of the Rules of Procedure (the “Rules”) requires matters in an Application for Dispute Resolution to be related. The main issue before me is the Notice.

Pursuant to rule 2.3 of the Rules, I told the Landlords I would not consider the request for compensation or to keep the security deposit. I also told the Landlords these requests are premature as the tenancy has not yet ended. These requests are dismissed with leave to re-apply. This does not extend any time limits in the *Residential Tenancy Act* (the “Act”).

Pursuant to rule 2.3 of the Rules, I told the Tenant I would not consider the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement or for repairs to be made to the rental unit. These requests are dismissed with leave to re-apply. This does not extend any time limits in the *Act*.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Landlords entitled to an Order of Possession based on the Notice?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There is a verbal tenancy agreement between Landlord M.L. and the Tenant in relation to the rental unit. The tenancy started in July of 2018. Rent is \$1,800.00 per month due on the first day of each month. A security deposit of \$900.00 was paid and no pet damage deposit was paid.

The Landlords testified that the tenancy is a month-to-month tenancy. The Tenant testified that he understood the tenancy to be a long-term tenancy.

The Notice is addressed to the Tenant. It refers to the rental unit. It is signed and dated by the Landlords or an agent. It has an effective date of April 01, 2019. The grounds for the Notice are as follows:

- I am ending your tenancy because I am going to perform renovations or repairs that are so extensive that the rental unit must be vacant. No permits and approvals are required by law to do this work.
- Landlord to move in April 1st 2019

The Tenant did not take issue with the form or content of the Notice. He said he does not believe it was issued in good faith.

The Landlords testified that Landlord M.L. posted all three pages of the Notice to the door of the rental unit November 17, 2018 with a witness. A Proof of Service was submitted; however, the witness has stated the Notice was served in person. The Landlords testified that the Notice submitted is actually a photo of the Notice posted to the door.

The Tenant testified that he received the Notice November 17, 2018 and that it was left at his doorstep. He said he believes he received all three pages.

The Tenant acknowledged that he has not paid rent for two months.

Analysis

I find the tenancy is a month-to-month tenancy in the absence of a written tenancy agreement stating that it is for a fixed term.

The Notice was issued under section 49(6) of the *Residential Tenancy Act* (the “Act”). Pursuant to section 49(8)(b) of the *Act*, the Tenant had 30 days from the date he received the Notice to dispute it.

The Tenant acknowledged receiving the Notice November 17, 2018. I accept the Landlords’ testimony that the Notice was posted to the door of the rental unit as I do not

find the Tenant's testimony about where the Notice was found causes me to question this. I find the Notice was served in accordance with section 88(g) of the *Act*.

The Tenant had 30 days from November 17, 2018 to dispute the Notice. The Tenant's Application was filed May 17, 2019 and the Amendment filed May 23, 2019, well outside the time limit for disputing the Notice. The Tenant did not apply for more time to file the dispute. Further, even if he had, the Tenant applied after the effective date of the Notice and the time to file could not have been extended past the effective date of the Notice as stated in section 66(3) of the *Act*.

Section 49(9) of the *Act* states:

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

The Tenant did not dispute the Notice in accordance with section 49(8)(b) of the *Act* as he did not dispute the Notice within 30 days of receiving it. Therefore, pursuant to section 49(9) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended on April 01, 2019, the effective date of the Notice. The Tenant was required to vacate by April 01, 2019. I note that this effective date complies with section 49(2)(b) of the *Act*.

Pursuant to section 49(7) of the *Act*, the Notice must comply with section 52 of the *Act*. I have reviewed the Notice and find that it does comply with section 52 of the *Act*.

I find the Landlords are entitled to an Order of Possession based on the Notice. The Landlords sought an Order of Possession effective June 30, 2019 and I issue the Landlords this Order pursuant to section 55 of the *Act*.

Given the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. I issue the Landlords a Monetary Order in this amount.

Conclusion

The Landlords are entitled to an Order of Possession based on the Notice. I issue the Landlords an Order of Possession effective at 1:00 p.m. on June 30, 2019. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlords are entitled to reimbursement for the \$100.00 filing fee and I issue the Landlords a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 18, 2019

Residential Tenancy Branch