



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation.

The two tenants attended the hearing; the landlord did not attend.

Tenant TJL stated that they served the landlord with their application for dispute resolution and notice of hearing letter by registered mail three different times, but the landlord failed to claim the package. The tenant submitted that he called and verified the mailing address of the corporate landlord prior to mailing their application package.

Based upon the tenant's submissions, I accept the landlord was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the tenants' application in the landlord's absence.

Thereafter the tenants were provided the opportunity to present their affirmed evidence orally, refer to documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, photographic, and documentary evidence before me; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenants' application been filed within the required time limit under the Act?

If so, are the tenants entitled to monetary compensation?

Background and Evidence

The written tenancy agreement submitted by the tenants shows that this tenancy began on November 15, 2011.

The tenants' documentary evidence, confirmed at the hearing, shows that they vacated the rental unit on April 30, 2017.

The tenants confirmed and the RTB records show that the tenants submitted and filed this application for dispute resolution on April 30, 2019.

Out of an abundance of caution, I allowed the hearing to proceed on the tenants' application, in the event I accepted that their application was filed within the required timelines under the Act.

The tenants provided testimony and support for their claim, referring to their evidence during the hearing.

Analysis

Section 44 of the Act provides for how a tenancy ends, more particularly for consideration in this case, the tenancy ends when a tenant vacates the rental unit.

In the case before me, I find the undisputed evidence provided by the applicant/tenants is that this tenancy ended on April 30, 2017, when the tenants vacated the rental unit.

Under section 60 of the Act, which governs this dispute, an application for dispute resolution *must* be made **within 2** years of the date that the tenancy to which the matter relates ends. What this means, is that the latest either party here could file an application for dispute resolution relating to this tenancy was *April 29, 2019*. (emphasis added)

I find this requirement is distinguished from a general limitation period under the *Limitation Act*, which states in relevant part that "...a claim must not be commenced more than 2 years **after** the day on which the claim is discovered". (emphasis added) As a way of clarification, **within 2** years in this case, can be explained as follows: the first year on a calendar year basis would run from April 30, 2017, when the tenants

vacated the rental unit, until April 29, 2018. The second year would then start on April 30, 2018, and run until April 29, 2019.

Therefore, I find that the “**within** 2 years of the date that the tenancy to which the matter relates ends” provision of section 60(1) of the Act requires that the application in this case be filed no later than April 29, 2019, as the start date commenced on the date of the tenancy ending April 30, 2017.

I find a common meaning of the word “within” is “before the end of”.

I find it important to note that other sections of the Residential Tenancy Act use the word “**after**” in calculating timelines, such as providing that a tenant may dispute a notice to end a tenancy within a designated number of days **after** receipt of a notice.

For the reasons above, I find the tenants’ application filed on April 30, 2019, was outside the statutory time limit and is therefore barred.

I therefore dismiss the tenants’ application, without leave to reapply.

Conclusion

The tenants’ application is dismissed, without leave to reapply, as it was filed outside the statutory time limit.

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: July 24, 2019

Residential Tenancy Branch