



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER MACPHERSON REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

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

The tenant and RM, listed in the style of cause page as a landlord, attended, they were affirmed into the hearing and initial testimony began.

The evidence was discussed and each party confirmed receipt of the other's evidence.

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 tenant's application been filed within the required time limit under the Act?

If so, is the tenant entitled to monetary compensation?

Background and Evidence

The written tenancy agreement shows and the parties agreed that this tenancy began on April 1, 2016. Although there is only one applicant, the tenancy agreement lists two tenants.

The written tenancy agreement also shows DB, the owner of the rental unit, was listed as landlord, not RM. The written tenancy agreement also shows a different real estate company other than the one listed by the tenant as landlord in this case as an agent on behalf of the landlord/owner, for contact information.

The tenant's documentary evidence shows that she sent RM an email that they were vacating the rental unit on April 30, 2017.

In response to my inquiry near the beginning of the hearing, the tenant confirmed that they vacated the rental unit on April 30, 2017.

In response to my inquiry, the tenant also confirmed that she submitted and filed this application for dispute resolution on April 30, 2019.

In response to my inquiry, RM agreed that the tenants vacated the rental unit on April 30, 2017.

During the hearing, after discussing timelines, the tenant then changed her testimony and said that they vacated the rental unit on May 1, 2017.

Further in the hearing, the tenant confirmed that she had begun another tenancy in a different rental unit sometime earlier in April 2017.

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/tenant and confirmed by RM is that this tenancy ended on April 30, 2017, when the tenants vacated the rental unit.

I do not accept the tenant's subsequent testimony changing the time she vacated the rental unit to May 1, 2017, which changed her original testimony, given prior to my explanation of the required timeline. As this testimony was contradictory, I find it unreliable.

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 I explained to the tenant in the hearing, **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 tenant’s application filed on April 30, 2019, was outside the statutory time limit and is barred from being heard.

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

Conclusion

The tenant’s 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 23, 2019

Residential Tenancy Branch