



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC OT

Introduction

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

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Other relief.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by their agent. The tenant attended at the start of the hearing and after confirming that their agent (the "tenant") was fully authorized to represent her, exited the hearing.

As both parties were present service of documents was confirmed. Both parties confirmed receipt of the respective materials. Based on the testimonies I find that each party was served with the respective materials in accordance with the *Act*.

Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to any other relief?

Background and Evidence

This periodic tenancy originally began in July 2015. The monthly rent is payable on the first of each month. The parties were involved in a previous hearing under the file number on the first page of this decision in 2017. That previous hearing dealt with the tenant's dispute of the landlord's Notices to End Tenancy issued at that time.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and 1 Month Notice to End Tenancy for Cause on April 23, 2019. The reason provided on the 1 Month Notice was that the tenant had been repeatedly late paying rent. The parties entered into a Mutual Agreement to End Tenancy on April 25, 2019 with an end of tenancy date of June 30, 2019.

The tenant submits that they were coerced into signing the Mutual Agreement and disputes that it is valid. The tenant submits that they suffer from mental health issues which limit their ability to deal with stressful situations, had no access to advocates, counsel or appropriate advice at the time of signing and was pressured by the landlord into entering the mutual agreement. The tenant says that the underlying reason for the tenancy to end given on the 1 Month Notice is inaccurate as there has not been repeated late payments. The tenant says that the landlord's ledger is incorrect and that the instances where the rent payment is shown as being late was due to the landlord's own failure to make themselves available to collect the rent.

The tenant further submits that a term of the Mutual Agreement was that the landlord would provide a positive reference letter for the tenant which would not disclose the repeated late payments. The tenant submits that the late payments recorded on the landlord's ledger are inaccurate and arise as a result of the landlord's own negligence. The tenant says that the landlord has failed to provide a positive reference letter as agreed and has included references to the inaccurate late payments.

The tenant now seeks an order setting aside the Mutual Agreement and reinstating the tenancy.

The landlord disputes that there was any coercion or unlawful methods employed in the negotiation to sign the Mutual Agreement. The landlord disputes that there was a term of the Mutual Agreement that the landlord would provide the tenant with a positive reference letter. The landlord states that if asked for a reference they would need to

accurately report the information as contained in their records including the late payments of rent.

Analysis

In accordance with Residential Tenancy Branch Rule of Procedure 6.6 the onus to establish their claim on a balance of probabilities lies with the applicant.

In the present case the tenant seeks an order that the Mutual Agreement to End the Tenancy should be set aside and the tenancy reinstated. I find that there is insufficient evidence in support of the tenant's claim.

While the tenant submits that they were coerced to enter into the Mutual Agreement I find that there is insufficient evidence that supports this position. In the past the tenant had filed an earlier application to dispute a Notice to End Tenancy which they felt was groundless. It is reasonable to conclude that the tenant was aware that invalid Notices could be disputed and set aside.

The tenant submits that they did not have access to appropriate counsel or advice. I do not find this to be borne out in the evidence or submissions. While the tenant may have some mental health issues I do not find the medical evidence submitted establishes that they are of diminished capacity or unable to make decisions. Anxiety and discomfort is not sufficient to conclude that the tenant was of diminished capacity which invalidates an agreement entered.

Furthermore, I find that the tenant had ample opportunity to seek advice if they felt they required assistance. The Notices to End Tenancy state on their face that a tenant may apply to dispute a Notice within 5 days of receipt for a 10 Day Notice and within 10 days of receipt for a 1 Month Notice. There was no urgency or requirement that the tenant enter the Mutual Agreement if they felt that the Notices were invalid and could be set aside. Furthermore, the tenant could have made efforts to obtain advice or assistance. While there is some reference made to that the tenant's primary advocate was unavailable, I do not find it reasonable that the tenant could not have obtained some advice or information through other individuals or agencies. The tenant had ample time under the Act, to file an application to dispute either of the Notices if they believed them to be invalid. Instead the tenant instead chose to sign and enter the Mutual Agreement on April 25, 2019, two days after being served.

I find that there is little evidence of coercion or undue influence being exerted by the landlord on the tenant forcing them to enter into the Mutual Agreement. I find that the bulk of the tenant's evidence deals with the basis for the 1 Month Notice. If the tenant felt that there was no basis for the 1 Month Notice, they simply could have applied to dispute it.

I do not find that there is evidence that the landlord providing a positive letter of reference was a material term of this Mutual Agreement. If this was so crucial to the agreement, it would be reasonable to expect that it would be recorded in writing or confirmed through written correspondence. Neither was done. I find the tenant's submission on this point to be unconvincing and disputed by the landlord. I accept the landlord's evidence that they would provide a letter of reference, as is their policy, but would not omit information or provide information that contradicts their records.

I find that the tenant has not met their evidentiary onus on a balance of probabilities. I find that there is insufficient evidence to show that there has been a violation of the Act, regulations or tenancy agreement by the landlord that requires an order that the landlord comply. I find that there is no evidentiary basis to set aside the Mutual Agreement of April 25, 2019. I consequently dismiss the tenant's application in its entirety without leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 25, 2019

Residential Tenancy Branch