



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL-4M, FFT, OLC, FFL, OPB, OPC, OPM

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to section 47;
- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "Four Month Notice") pursuant to section 49;
- an order for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

This hearing dealt with the landlord's application pursuant to the *Act* for:

- an Order of Possession pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Issue: Withdrawal of Four Month Notice

The landlord testified that they have withdrawn the Four Month Notice. Accordingly, the tenants' application to cancel the four Month Notice is now moot and this application is dismissed pursuant to section 62(4)(b) of the Act.

Preliminary Issue: Severance of Portion of Tenant's Application

Residential Tenancy Branch Rules of Procedure, number 2.3 states that:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the One Month Notice and the continuation of this tenancy is not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing in order to address the question of the validity of the One Month Notice.

The tenant's other claims are unrelated in that they do not pertain to facts relevant to the grounds for ending this tenancy as set out in the One Month Notice. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except for the cancellation of the One Month Notice and recovery of the filing fee for this application.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the landlord's One Month pursuant to section 47?

Are the landlord entitled to an Order of Possession pursuant to section 55;

Are the tenants entitled to reimbursement of their filing fees?

Are the landlords entitled to reimbursement of their filing fees?

Background and Evidence

The tenancy agreement was signed on January 7, 2019. The tenancy agreement states monthly rent of \$1,950.00 and a \$975.00 security deposit.

The tenancy agreement states that the term of the tenancy agreement is a fixed term tenancy with an ending date of July 31, 2019. The tenancy agreement states:

2.(D) At the end if this time, the tenancy will continue on a month-to-month basis, or another fixed length, unless the tenant gives notice to end tenancy at least one clear month before the end of the term.

The landlord also presented an addendum dated January 19, 2019, signed by tenants R.M. and T.T. which stated the following:

The rental agreement for the property at [redacted], is for 6 months from the date of February 1, 2019 and until July 31, 2019 and there after will be on a month to month basis...

Based on the tenancy agreement and the addendum, the landlords argue that the tenants agreed to end the tenancy on July 31, 2019. The landlord testified that the tenants were aware that this tenancy was only until July 31, 2019.

Furthermore, the landlords testified that this was stated in the advertisements for the rental when the property was marketed. The landlords presented an online classified advertisement which stated that, "This is a short term (6 month) rental."

The landlords testified that they issued and served the One Month Notice on June 24, 2019. The One Month Notice stated a move out date for July 31, 2019. The landlords did not check any of the boxes on the second page of the notice stating the reason for ending the tenancy. Under the box for 'Details of Cause(s)', the landlords stated that following:

END OF FIXED TERM TENANCY IS ON JULY 31, 2019 AS AGREED AND
SIGNED BY YOU [tenants' names redacted]

The tenants argued that the One Month Notice was invalid because it did not state a reason to end tenancy. In addition, the tenants argued that the tenancy agreement

states that this tenancy become a month-to-month tenancy after July 31, 2019. The tenants testified that they have not made an agreement to end the tenancy on July 31, 2019. The tenants also argued that the addendum is unenforceable to the extent that it does not comply with the *Act*.

Analysis

Section 44 of the *Act* states the ways a tenancy can end:

- 44 (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 *[tenant's notice]*;
 - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
 - (ii) section 46 *[landlord's notice: non-payment of rent]*;
 - (iii) section 47 *[landlord's notice: cause]*;**
 - (iv) section 48 *[landlord's notice: end of employment]*;
 - (v) section 49 *[landlord's notice: landlord's use of property]*;
 - (vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;
 - (vii) section 50 *[tenant may end tenancy early]*;
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97(2) a.1), requires the tenant to vacate the rental unit at the end of the term;**
 - (c) the landlord and tenant agree in writing to end the tenancy;**
 - (d) the tenant vacates or abandons the rental unit;
 - (e) the tenancy agreement is frustrated;
 - (f) the director orders that the tenancy is ended;
 - (g) the tenancy agreement is a sublease agreement.

[emphasis added]

The landlords seek to end the tenancy by issuing a One Month Notice. The One Month Notice is a notice to end tenancy for cause based upon a ground set forth in section 47 of the *Act*. However, the landlords have not indicated which reason under section 47 of the *Act* that the landlords are requesting an end of the tenancy. Furthermore, the expiration of a fixed term tenancy is not a valid reason to end tenancy pursuant to section 47 of the *Act*.

Accordingly, the landlords' One Month Notice cannot be upheld and the tenants' application to cancel the One Month Notice is granted. The landlords' One Month Notice is hereby void and it has no force or effect.

The landlords also argued that the tenancy ended on July 31, 2019 by the mutual agreement of the parties. Specifically, the landlords argued that the terms of the tenancy agreement and the addendum stated the tenancy ended on July 31, 2019. However, I find that the tenancy agreement and the addendum actually state that the tenancy will continue on a month-to-month basis after July 31, 2019.

Furthermore, I do not find the terms in the landlord's classified advertisement to be relevant. The parol evidence rule is a rule of contractual construction which states that extrinsic evidence cannot be used to vary the terms of a written contract. By applying the parol evidence rule in this matter, I find that the terms of the classified advertisement cannot be applied to vary the unambiguous terms in the tenancy agreement.

For the forgoing reasons, I find that the tenancy agreement states that the tenancy agreement will continue on a month-to-month basis and the parties did not execute a mutual end to tenancy.

Accordingly, the landlords' application for an order of possession is denied. This tenancy shall continue until it ends pursuant to the *Act*.

Since the tenants have prevailed in their matter, the tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from ONE future rent payment to recover the filing fee.

Since the landlords have not prevailed in their application, the landlords' application for reimbursement of the filing fee is dismissed pursuant to section 72.

Conclusion

The tenants' application to cancel the One Month Notice is granted. The landlords' One Month Notice is hereby void and has no force or effect.

The landlords' application for an order of possession is denied. This tenancy shall continue until it ends pursuant to the *Act*.

The tenants' application for reimbursement of the filing fee is granted pursuant to section 72. The tenants may deduct may deduct \$100.00 from ONE future rent payment to recover the filing fee.

The landlords' application for reimbursement of the filing fee is dismissed pursuant to section 72.

The tenants' application for an order for the landlord to for the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 is dismissed with 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: September 3, 2019

Residential Tenancy Branch