



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

In this dispute, the landlord sought compensation against their former tenants for various damages to the rental unit, compensation for unpaid rent, and recovery of the filing fee, pursuant to sections 67 and 72 of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on July 31, 2019 and a dispute resolution hearing was held on November 25, 2019. The landlord, one tenant, and a tenant’s agent attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Neither party raised any issues with respect to the service of evidence.

While a considerable amount of evidence was submitted in this dispute, I have only considered evidence relevant to the preliminary issue of this application.

Preliminary Issue: Limitation Period

In reviewing the materials submitted for this application I noted that a previous arbitrator’s decision referred to the tenants’ vacating the rental unit in late June 2017. I further note that the landlord filed their application for dispute resolution on July 31, 2019.

To ensure that the dates and time limitations were set out clearly at the outset, I asked the landlord about whether the tenants had vacated, or left, the rental unit in late June of 2017. They confirmed that the tenants had indeed vacated the rental in late June 2017. A condition inspection report (undated) was completed on July 31, 2017.

Section 44(1)(d) of the Act states that “A tenancy ends only if one or more of the following applies [. . .] the vacates or abandons the rental unit.”

In this dispute, based on the oral evidence – which confirmed the findings of fact in the arbitrator’s decision of January 30, 2018 – the tenants vacated the rental unit by the end of June 2017. Notwithstanding whatever written notice may not have been given by the tenants as required under the legislation, the tenancy itself ended no later than June 30, 2017. I did not get into the specific date in June 2017 that the tenant vacated, as it was immaterial to the limitation period discussed below; suffice to say it was no later than June 30, 2017 for the purposes of my analysis.

Section 60 of the Act reads as follows. I shall reproduce it in full, given that the landlord raised an issue with respect to this section.

(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the *Limitation Act*, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Given that the tenancy ended no later than June 30, 2017, it follows that the landlord must have filed for dispute resolution within two years of the tenancy ending. The clock starts ticking on the first day after the date on which the tenants vacated. The landlord had until, and no later than, the end of June 2019 to file an application for dispute resolution.

During my explanation to the parties as to why I was unable to proceed with the hearing because of the two-year limitation, the landlord asked about whether the time is extended if there is another dispute. This is permitted under section 60(3) of the Act, but

only when the first dispute has not been concluded. Thus, for example, if one party files an application for dispute resolution on the very last day of a two-year limitation period, the opposing party may then file a counter-dispute beyond that two-year limitation period *if the first dispute has not yet been concluded*.

In this case, however, the tenants' application for dispute resolution concluded on January 30, 2018 (when the decision was issued), and no application was made by the landlord until several months later.

For the reasons I have explained above, I find that the landlord's claim in respect of the tenancy ceases to exist, pursuant to section 60(2) of the Act. The landlord's claim is therefore dismissed without leave to reapply.

Conclusion

I dismiss the landlord's application for dispute resolution 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 Act.

Dated: November 25, 2019

Residential Tenancy Branch