



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL MNDCT OLC**

Introduction

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

An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;

An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and

A monetary order for damages or compensation pursuant to section 67.

Both the tenant and the landlord NJ attended the hearing ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

Preliminary Issue

At the commencement of the hearing, it was confirmed that the tenant had moved out of the rental unit and no longer occupies it. Therefore, the tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use no longer discloses a dispute that may be determined under Part 5 of the *Act* and I dismissed this portion of the tenant's claim pursuant to section 62(4). Likewise, the landlord/tenant relationship has ended and I dismissed the tenant's application for the landlord to comply with the *Act*, Regulations or tenancy agreement, pursuant to section 62(4).

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties

could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issue a decision to resolve this dispute.

Issue(s) to be Decided

Is the tenant entitled to compensation pursuant to section 51 for being served with a Two Month Notice to End Tenancy for Landlord's Use?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The rental unit is the lower unit in a house with an upper unit that was occupied by the landlord and a lower unit occupied by the tenant. The month to month tenancy began on July 1, 2019 with rent set at \$1,000.00 payable on the first day of the rental period which falls on the 31st day of each month. A security deposit was collected by the landlord however it was returned to the tenant at the end of the tenancy.

The tenant provided the following testimony. On Sunday, November 30, 2019, the landlord came to her door at 8:40 a.m. She didn't answer the door. At 9:45 a.m., the landlord came to her door again and served her with the first page of a Two Month Notice to End Tenancy for Landlord's Use ("Notice"). Pages 2 and 3 were not given to her. At the time, she was unaware that the form had 3 pages. Page 1 of the Notice was provided as evidence by the tenant. The Notice is dated November 30, 2019 and gives an effective date of January 31, 2020. The tenant indicated she is aware the Notice should have been given to her on the 29th of the month, however she does not take issue with it.

The same day, at 1:30 a.m., the tenant gave the landlord a tenant's notice to end tenancy ("notice"). In the tenant's notice, the tenant states:

"Congratulations on your upcoming sale of your house! I appreciate [landlord] giving me the 'heads up' that the new owners were not interested in keeping me as a tenant..."

The tenant later indicates she will be vacating the unit as of noon, December 31, 2019. The tenant also asks in the same document that her \$500.00 security deposit and an additional \$500.00 transferred on the same date cover rent for the month of December. The tenant further states in her Notice:

"This way, no one need 'figure out' when 3 proper, full month's Notice (1 month's free rent) be properly delivered to me nor who is responsible to return my damage deposit to me..."

The tenant testified that the rent for the full month of December was paid before the effective date stated on the tenant's notice, December 31, 2019. The tenant received her entire security deposit back at the end of the tenancy.

The landlord provided the following testimony. On November 4th, he gave the tenant a letter advising the home is for sale and that the landlord will provide the tenant with 24 hours of notices to show it. On Sunday, November 30th at 6:15 p.m., the tenant served the landlord with her tenant's notice to end tenancy, referred to above. An hour or so later, at 7:21 p.m., on the advice of his realtor, the landlord served the tenant with the Two Month Notice to End Tenancy for Landlord's Use. The landlord testified he gave all 3 pages of the Notice. I note that in the landlord's evidence package that only page 1 of the 3 page Notice as alleged by the landlord was provided for me to view. The landlord testified that he did not provide the tenant with any written request from the purchaser of the house to end the tenancy.

Analysis

The following sections of the *Act* are relevant to this case (Emphasis added)

49 (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

- i) not earlier than 2 months after the date the tenant receives the notice,
- ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) **giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and**

(b) **paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.**

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) **A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].**

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

It is undisputed between the parties that the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use ("Notice") on November 30, 2019. The tenant testified that the Notice was missing pages 2 and 3 when the Notice was given to her which the landlord disputes. Nonetheless, there is no doubt a Notice produced pursuant to section 49 of the *Act* was served.

The tenant also gave the landlord a notice to end tenancy the same day. In dispute is whether it was given to the landlord before or after the landlord served the tenant with his Notice. Neither party could provide overwhelming evidence to prove their version of the facts as presented should be considered more compelling, so I turn to the documentary evidence. I find the tenant's notice in congratulating the landlord for selling the home to be indicative of the tenant receiving the landlord's Notice first. I am satisfied the tenant received the landlord's Notice, then gave her notice in response. While I've made the finding that the landlord served Notice first, in terms of whether the tenant is entitled to compensation is not contingent upon this factor. A Notice produced pursuant to section 49 of the *Act* was served upon the tenant by the landlord.

The tenant's notice is a notice produced under section 50(1)(a) of the *Act*, as the tenant received the landlord's Notice issued pursuant to section 49. The tenant has a right to end the tenancy on any date that is earlier than the effective date on the landlord's Notice. In this case, she ended the tenancy on December 31st, rather than the effective date of January 31st stated on the landlord's Two Month Notice to End Tenancy for Landlord's Use.

In accordance with section 50(1)(b), the tenant paid rent up to December 31st, the effective date of the tenant's notice. I find the tenant has fulfilled all her obligations in accordance with section 50.

While the tenant took issue with how many pages to the landlord's Notice she was given, such a discrepancy should not prevent her from being awarded compensation as required by section 51 of the *Act*. I find that, for the purposes of determining whether the tenant is entitled to compensation, the tenant was provided with a valid Two Month Notice to End Tenancy for Landlord's Use in accordance with section 62(2) of the *Act*.

As stated in section 50(3) of the *Act*, ending the tenancy earlier than the effective date stated on the landlord's Notice does not affect the tenant's right to compensation. I find the tenant is entitled to the equivalent of one month's rent compensation in the amount of \$1,000.00 in accordance with section 51(1) of the *Act*.

Section 72 allows the director to award fees paid in accordance with section 59(2)(c). Photocopy fees and stationary supplies are not recoverable pursuant to section 72 and I decline to award these items.

The tenant did not pay a fee to commence this dispute resolution and no filing fees will be awarded.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,000.00.

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: February 07, 2020

Residential Tenancy Branch