



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNL, RP, LRE**

Introduction

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

- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49;
- An order for the landlord to make repairs to the rental unit pursuant to section 33;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

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 landlord was represented by their family member.

As both parties were present service was confirmed. The parties each confirmed receipt of the materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to make repairs to the rental unit?

Should the landlord's right to enter the rental unit be restricted?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began in May 2019. The rental unit is the upper levels of a detached home. The monthly rent is \$3,000.00 payable on the 5th of each month. The tenant is also responsible for paying 60% of the utilities for the property.

By a letter dated January 1, 2020 the landlord attempted to give notice to end the tenancy on April 30, 2020. The letter states:

This notice serves as a reminder for the Term of Agreement. Of which is nearing the fixed term ending of April 30, 2020, and also as a notice to vacate the property after afore mentioned date.

This is a four month notice for you and your family to find a new residence.

Furthermore, if you wish to vacate the property before the fixed term has reached its ending in April 30th 2020, then please give a 1 month notice.

The tenant filed their application to dispute the letter on January 19, 2020.

The landlord subsequently issued a 1 Month Notice to End Tenancy for Caused dated March 1, 2020 and providing an effective date of March 31, 2020. The tenant confirmed receipt of the notice. They submitted a copy of the 1 Month Notice in to evidence but did not file an application to dispute the notice nor did they amend their present application.

Both parties focused much of their testimony and evidence on various grievances they had with the other's conduct and attitude. The landlord complained about the tenant allowing additional occupants to reside in the rental unit, littering in the adjacent streets and keeping the rental property in a state of disrepair. The tenant testified that they were dissatisfied with the landlord's failure to repair appliances in a timely manner, that the downstairs neighbors do not dispose of garbage properly and made complaints about the landlord's presence on the rental property.

Analysis

In accordance with Residential Tenancy Rule of Procedure 2.2 a claim is limited to what is stated in the application.

The tenant confirmed at several points throughout the hearing that while they had applied to dispute a 2 Month Notice they have not filed an application or amendment to dispute a 1 Month Notice. Simply including a copy of a notice to end tenancy in evidence is not an appropriate means of disputing it.

Accordingly, I find that cancelling or upholding the 1 Month Notice is not a part of this application and I make no finding on that issue.

The tenant seeks to dispute a 2 Month Notice and interprets the letter of January 1, 2020 as a notice to end tenancy. The landlord characterized it as a valid 4 Month Notice as the letter provides an effective date of April 30, 2020. I find that both parties are incorrect in characterizing this letter as an effective notice to end tenancy.

Section 52 of the *Act* provides that:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form

The letter of January 1, 2020 is not in the prescribed form, does not provide the rental unit address and is deficient as a notice to end tenancy.

Furthermore, in accordance with section 97(2) of the *Act* and as clearly written on the tenancy agreement, a landlord cannot require a tenant to vacate a rental unit at the end of a fixed-term.

I find that the letter of January 1, 2020 does not conform to the requirements of section 52 and therefore is ineffective.

The tenant's evidence on the issues of repairs and the landlord's right to access the rental unit consisted mainly of subjective complaints with little documentary evidence in support. I find that the copies of correspondence submitted by the tenant to simply parrot their testimony about their ongoing acrimonious relationship with the landlord. I do not find that there is sufficient evidence that there are any issues with the condition of the rental unit or the appliances requiring repairs. Similarly, I find that the tenant has

not met their evidentiary onus to show that there is a basis for an order restricting the landlord's right to enter the rental unit. Accordingly, I dismiss this portion of the tenant's claim.

As the tenant was not wholly successful in their application I decline to issue an order allowing the tenant to recover their filing fee.

Conclusion

As I find there was no valid 2 Month Notice to End Tenancy, this tenancy continues until ended in accordance with the Act.

The balance of 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: March 24, 2020

Residential Tenancy Branch