



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

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

- Cancellation of a Notice to End Tenancy for Landlord's use (the Notice), pursuant to section 49;
- An order requiring the landlord to comply with the Act, regulations, and/or tenancy agreement, pursuant to section 62; and
- Recovery of the filing fee for this application from the landlord, pursuant to section 72.

I left the teleconference connection open until 9:54 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. The landlord did not attend the hearing. The tenants attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

I accept the tenants' testimony that the landlord was served the materials by email sent on May 14, 2020. A copy of the email was submitted into evidence. Emails received from the landlord on May 12, 2020, using the same email address, were submitted into evidence. I find the tenants served the materials to the landlord in accordance with the Residential Tenancy Branch Director's order dated March 30, 2020.

The Residential Tenancy Branch Director's order dated March 30, 2020 provides that a document served by email is deemed to have been received three days after it was emailed. The landlord is deemed to have received the materials on May 17, 2020.

Preliminary Issue – Moot Application to Cancel the Notice

At the outset of the hearing the tenants affirmed the landlord did not serve a Notice to end tenancy.

The application to cancel the Notice is moot, as a Notice was not served.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for cancellation of the Notice.

Issues to be Decided

Are the tenants entitled to:

1. An order for the landlord to comply with the Act, regulations, and/or tenancy agreement?
2. Recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The tenants affirmed the tenancy started on April 03, 2020. Monthly rent is \$3,400.00, due on the third day of the month. At the outset of the tenancy a security deposit of \$1,700.00 was collected and the landlord still holds it.

The tenancy agreement was submitted into evidence. In section 2, the tenancy agreement states the tenancy starts on April 03, 2020 for a fixed term ending on August 03, 2020. With regard to what happens after the end of the fixed term, option D is selected which states "at the end of this time, the tenancy will continue on a month-to-month basis, or another fixed length of time, unless the tenant gives notice to end tenancy at least one clear month before the end of the term".

The tenants affirmed the landlord is planning to demolish the rental unit and wants to end the tenancy at the end of the fixed term on August 03, 2020. The landlord is threatening the tenants to get them to vacate the rental unit.

On May 12, 2020 the tenants emailed the landlord and explained that, according to Section 49 of the Act, the landlord may end the tenancy with a notice to end tenancy. The landlord replied stating:

This was a short term rental agreement until August 3 2020 we added in after that monthly. Sorry but you have to be out by August 3 2020 as we are starting asbestos abatement. Thanks you.

The tenants explained again that a notice to end tenancy must be served by the landlord. The landlord replied:

All further communication will be through our lawyer
If you delay our demolition and construction we will be suing approximately \$500 per day delay Shaida please forward all emails and rental contract to our lawyer
And let her know we will be looking to the tenant for all legal costs and delay costs if they are not out by August 3 2020

The landlord also copied the tenants in an email sent to his assistant asking her to contact his lawyer so legal actions can be taken against the tenants.

Analysis

Section 13(2) of the Act states:

- (2)A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:
- (a)the standard terms;
 - (b)the correct legal names of the landlord and tenant;
 - (c)the address of the rental unit;
 - (d)the date the tenancy agreement is entered into;
 - (e)the address for service and telephone number of the landlord or the landlord's agent;
 - (f)the agreed terms in respect of the following:**
 - (i)the date on which the tenancy starts;
 - (ii)if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;**
 - (iii)if the tenancy is a fixed term tenancy, the date on which the term ends;**
 - (iii.1)if the tenancy is a fixed term tenancy in circumstances prescribed under section 97 (2) (a.1), that the tenant must vacate the rental unit at the end of the term;**

- (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
- (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
- (vi) which services and facilities are included in the rent;
- (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

(emphasis added)

Section 13.1 of the Residential Tenancy Regulation states:

- (1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.
- (2) For the purposes of section 97 (2) (a.1) of the Act [prescribing circumstances when landlord may include term requiring tenant to vacate], the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that
 - (a) the landlord is an individual, and
 - (b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term

The landlord plans to demolish the rental unit. Thus, section 13.1 of the Residential Tenancy Regulation does not apply.

Based on the tenants undisputed testimony, tenancy agreement and emails, I find the tenants started a fixed-term tenancy on April 03, 2020 and on August 04, 2020 this tenancy will continue as a periodic tenancy, in accordance with section 13(2) of the Act.

Section 44 of the Act states:

- (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.

(2)[Repealed 2003-81-37.]

(3)If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

(emphasis added)

Based on the tenants undisputed testimony, tenancy agreement and emails, I find the landlord is attempting to end the tenancy on the end date of the fixed term portion of the tenancy agreement and in doing so the landlord is failing to comply with section 44 of the Act.

As such, I order the landlord to comply with the tenancy agreement and section 44 of the Act.

As the tenants were successful with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee. I order that this amount be deducted from a future rent payment.

Conclusion

I order the landlord to comply with the tenancy agreement and section 44 of the Act.

The tenants are authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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: June 16, 2020