Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kloot's Holdings Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and counsel for the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that the landlord was served with the tenant's application for dispute resolution via registered mail on March 13, 2020. A Canada Post receipt stating same was entered into evidence. Counsel for the landlord confirmed the landlord's receipt of the tenant's application for dispute resolution. I find that the landlord was served in accordance with section 89 of the *Act.*

Preliminary Issue- Landlord's request to join applications

The landlord filed an application for dispute resolution seeking monetary compensation for physical damage to the subject rental property. The landlord's application was filed too late to be joined with the tenant's application for dispute resolution and is scheduled to proceed on October 23, 2020. The file number for the October 23, 2020 hearing is on the cover page of this decision. Counsel for the landlord requested the matters be joined.

The tenant's application for dispute resolution is a section 51 claim, seeking 12 months' rent because the landlord allegedly did not use the subject rental property for the stated purpose on the notice of eviction.

Section 2.10 of the Residential Tenancy Branch Rules of Procedure states:

> Applications for Dispute Resolution may be joined and heard at the same hearing so that the dispute resolution process will be fair, efficient and consistent. In considering whether to join applications, the Residential Tenancy Branch will consider the following criteria:
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> a) whether the applications pertain to the same residential property or residential properties which appear to be managed as one unit;
> b) whether all applications name the same landlord;
> c) whether the remedies sought in each application are similar; or
> d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of fact or law in resolving each application.

I find that while the applications pertain to the same landlord and tenant at the same residential tenancy address, I would not consider the same facts or make the same or similar findings of fact or law in resolving each application as the applications are based on completely different monetary claims. In addition, I find that the tenant would be prejudiced in joining the claims as she would not have time to prepare her defence and serve the landlord with any supporting evidence.

Section 2.3 of the *Residential Tenancy Branch Rules of Procedure* state:

> 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.

I find that the two claims are unrelated. Pursuant to section 2.3 and 2.10 of the Rules, I decline to join the applications.

Preliminary Issue- Limitation period

Counsel for the landlord submitted that the tenant's application for dispute resolution was outside the statutory limitation period. Counsel's written submissions state in part:

The Tenant did not make an application for dispute resolution in relation to the Notice until on or about March 13, 2020, and is conclusively presumed to have accepted the Notice as of December 16, 2020. The Tenant therefore allowed the window within which she had the ability to make an application for dispute resolution expire almost three months prior to the Tenant making the application for dispute resolution.

Section 49(4) of the *Act* states:

> A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(8) of the *Act* states:

> A tenant may dispute
>
> (a)a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or
>
> (b)a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

Section 49(9) of the *Act* states:

> If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
>
> (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
>
> (b)must vacate the rental unit by that date.

The 15 day limitation period pertains to the time in which a tenant has to dispute a notice to end tenancy and that if the tenant does not dispute the notice in that time frame, the tenant is deemed to have accepted the end of the tenancy on the effective date of the notice. In this case, the tenant is not disputing the notice to end tenancy, she is making a monetary claim under section 51 of the *Act.*

Section 60(1) of the *Act* states:

> 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.

Both parties agree that this tenancy ended on January 31, 2020. I find that the tenant filed her application for dispute resolution within the two-year limitation period set out in section 60(1) of the *Act.*

Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2014 and ended on January 31, 2020. Monthly rent in the amount of $1,335.00 was payable on the first day of each month. A security deposit of $600.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The tenant testified that she was served with Two Month Notice to End Tenancy for Landlord's Use of Property via posting on December 1, 2019. The tenant testified that the "Two" on the notice was scratched out and replaced with a "Four" so that the eviction notice read "Four Month Notice to End Tenancy for Landlord's Use of Property". Counsel for the landlord agreed with the above testimony.

The tenant testified that the notice to end tenancy stated the following reason for ending this tenancy:

- The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The tenant testified that she provided the landlord with notice via text message that she would move out of the subject rental property prior to the effective date of the notice, on January 31, 2020. The tenant testified that she asked the landlord via text message if her text notice to end the tenancy earlier that that stated on the notice to end tenancy was acceptable, and the landlord replied in the affirmative. Counsel for the landlord did not dispute the above testimony.

The tenant testified that a close family member of the landlord did not move into the subject rental property and that the subject rental property was re-rented to a non-family member by February of 2020. This testimony was not disputed by counsel for the landlord.

Counsel for the landlord submitted that the landlord served the tenant with the notice to end tenancy because a shareholder of the family corporation wanted to re-develop the subject rental property for her disabled son's permanent residence.

Counsel for the landlord submitted that after the tenant was served with the notice to end tenancy, the landlord encountered "red tape" which prevented the landlord from re-developing the subject rental property and making it a suitable home for the shareholder's son. When the landlord learned that the subject rental property would not be suitable for the shareholder's son, the landlord re-rented the subject rental property.

Counsel for the landlord's submissions state:

> …the Landlord leased the property to her son, [C.K.]. [C.K.] makes the monthly rental payments, but allows to one of his employees to reside within the Rental Unit.

Counsel for the landlord submitted that the landlord went through the proper process and emailed the City in question regarding redeveloping the property. Counsel for the landlord submitted that the landlord took reasonable steps to use the subject rental property for the purpose stated on the notice to end tenancy, but that extenuating circumstances prevented said use.

The landlord entered into evidence an email dated December 19, 2019 from the City in question to a shareholder of the landlord. The email states "Thank you for coming into City Hall to discuss options for residential redevelopment at [the subject rental property]." The email goes on to discuss re-development options and limitations.

Analysis

Section 51(2) of the *Act* states that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

> (a)steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
> (b)the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the testimony of the tenant and the submissions of counsel for the landlord, I find that the subject rental property was not used for the stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice, contrary to section 51(2) of the *Act.* A shareholder or a close family member of a shareholder did not move into the subject rental property.

Section 51(3) of the Act states that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

> (a)accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
> (b)using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Residential Tenancy Branch Policy Guideline #50 states:

> An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:
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> - A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.

- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal, but didn't notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations.

I find that the red tape encountered by the landlord in re-developing the property does not constitute an extenuating circumstance. I find that the landlord had an obligation to enquire into the basic feasibility of re-developing the subject rental property prior to serving a notice to end tenancy on the tenant. I equate the failure of the landlord to enquire into the re-development possibilities as the same as a landlord's failure to adequately budget for renovations, as set out in Policy Guideline 50.

I note that the landlord should have served the tenant with a Four Month Notice for Renovation or Repair and not a notice for Landlord's Use of Property, as it was the landlord's intention to re-develop the property, and not to have her son move in immediately. While the incorrect notice was served on the tenant, the compensation provisions under section 51 still apply as the landlord is responsible for the notice served on the tenant. I find that the scratching out of the "Two" and replacing it with a "Four" does not substantially change the notice to end tenancy other than increasing the notice period. I find that this change does not impact the tenant's ability to claim under section 51 of the *Act.*

Pursuant to my above findings, I award the tenant the equivalent of 12 months rent, in the amount of $16,020.00, pursuant to section 51 and 67 of the *Act.*

As the tenant was successful in her application for dispute resolution, I find that she is entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the tenant in the amount of $16,120.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 13, 2020

Residential Tenancy Branch