



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, MNDC, FF

Introduction

On August 4, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a Two Month Notice to End Tenancy for Landlord Use of Property (“the Two Month Notice”). The Tenant also applied for an order for the Landlord to make repairs, and for money owed or compensation for damage or loss under the Act.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the disputed Two Month Notice. The Tenants other claims are dismissed with leave to reapply.

Issue to be Decided

- Should the Two Month Notice to End Tenancy be cancelled or is the tenancy ending?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on January 1, 2019, as a one-year fixed term tenancy that has continued thereafter on a month to month basis. Rent in the amount of \$1,050.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$525.00.

The Landlord issued the Tenant a Two Month Notice dated July 20, 2020. The reason cited in the Notice for ending the tenancy is:

The rental unit will be occupied by the Landlord or the Landlord's close family member. The child of the Landlord or Landlords spouse.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant applied to dispute the Two Month Notice on August 4, 2020 within the required time period.

The Landlord testified that his son is moving back to the coast and needs a home. He testified that his son could not find suitable accommodation and therefore he will be moving into the rental unit. The Landlord testified that his son is ready and waiting to move in.

In reply, the Tenant testified that the Landlord cannot end her tenancy because she has a lease in place. She testified that she had conversations with the Landlord on December 4, 2019; January 1, 2020; and January 13, 2020 regarding a new fixed term tenancy agreement.

When asked if a written fixed term tenancy agreement was entered into, the Tenant replied that no document was signed. She testified that it was a discussion to renew, in

the spring and she testified that she began to pay an increase of rent based on their discussions. She testified that she paid an additional \$25.00 each month starting **April**, May; June and July 2020. She testified that the Landlord accepted the increased rent payments and she never received a notice of rent increase form from the Landlord.

The Tenant provided a copy of text message conversations between her and the Landlord.

In reply, the Landlord testified that the \$25.00 rent increase was not his acceptance of a new lease but simply an annual rent increase. He testified that he was not aware that he needed to issue a proper notice in order to increase the rent.

The Landlord testified that he was not interested in entering into a new lease in December 2019 and that he discussed entering into a lease in the spring. He testified that due to covid 19 he changed his mind and decided it was not a good idea. He testified that he did not enter into a new lease and that the tenancy is on a month to month basis. He submitted that the lease discussions were never finalized.

Analysis

Residential Tenancy Policy Guideline #30 Fixed Term Tenancies provides;

A landlord cannot give notice for landlord's use of property that will end a fixed term tenancy before the end of the fixed term.

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The Act provides a definition of a fixed term tenancy and states that a "fixed term tenancy" means a tenancy under a tenancy agreement that specifies the date on which the tenancy ends.

The basic components of a contract are as follows:

- offer;
- acceptance;
- consideration; and
- capacity.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the fixed term tenancy agreement ended on December 31, 2019 and the tenancy continued on a month to month basis.

I find that the parties discussed entering into another fixed term tenancy agreement; however, I find that a written and signed lease agreement was never completed.

I have considered whether or not the parties reached verbal lease agreement that is binding.

A text message dated January 13, 2020 from the Landlord to the Tenant provides:
"Good morning Robyn. I'd like to get you back into a longer-term lease arrangement. Although I'd like to avoid end of December as end time. I'd like to go with something that puts the decision date closer to end of April or even May. So, I'm thinking we roll on month to month until spring and then go a 12 month lease at \$1075/mth. Does that timing work for you? The Tenant replied, "sounds perfect".

A text message dated June 18, 2020 from the Landlord to the Tenant provides:
"Good morning Robyn, it is time to look at signing a lease. Are you inclined to sign for a year? The Tenant replied "Absolutely".

A text message dated July 12, 2020 from the Landlord to the Tenant states that his son is moving back to the coast and the Landlord is going to need the suite.

I find that the Landlord made an offer of a 12-month fixed term tenancy agreement with a rent increase to \$1,075.00. The Tenant accepted the offer. I find that the Tenant began paying increased rent as of May 2020 and that the Landlord accepted the increased rent payments.

I find that the parties actions meet the basis components of a contract and their discussions to meet and sign a written agreement would only serve to record their verbal agreement. I find that the parties entered into a 12-month fixed term tenancy agreement as of ~~May~~ **April** 1, 2020 when the Landlord accepted the increased rent payment. I find that by paying the increased rent amount in ~~May~~ **April** 2020 as requested by the Landlord, the Tenant accepted the offer of a 12-month fixed term tenancy.

I find that the parties entered into a fixed term tenancy starting ~~May~~ April 1, 2020 **at a monthly rent of \$1,075.00** to continue until ~~April 30, 2020~~ **April 1, 2021**.

I find that the Landlord may not end a fixed term tenancy by issuing a Two Month Notice to end the tenancy before the end of the fixed term. The Two Month Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with her application. I authorize the Tenant to deduct the amount of \$100.00 from one future rent payment.

Conclusion

The Tenant's application to cancel the Two Month Notice dated July 20, 2020 is granted. The tenancy will continue until ended in accordance with the Act.

The Tenant is authorized to deduct \$100.00 from one future rent payment.

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: September 16, 2020

Corrected September 22, 2020

Residential Tenancy Branch