Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-4M, RP, OLC, FFT**

Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Four Month Notice") pursuant to section 49(6);
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both tenants attended (“the tenant”). They were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional forty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

Service upon landlord

The tenant provided testimony they served the landlord with the Notice of Hearing and an Application for Dispute Resolution by sending the documents by email to the landlord on March 09, 2021 at the email address routinely used by the landlord to correspond about tenancy matters from an email address that tenant routinely used for such correspondence. The tenant testified the landlord replied the following day by email, acknowledged receipt of the documents and provided information on an upcoming inspection of the unit.

In an application of this type, the tenant must serve the documents as set out in Section 89 of the Act service as follows:

> **89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
> (a) by leaving a copy with the person;
> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.
> (f) by any other means of service provided for in the regulations.

Policy Guideline 12 – Service Provisions states in part as follows regarding service by email:

> *At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. A person who does not regularly check their email should not provide an email address to the other party for service purposes.*
>
> *A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 -"Address for Service" form and provide it to the other party.*
>
> *If there has been a history of communication between parties by email, but a*

party has not specifically provided an email address for service purposes, it is not advisable to use email as a service method.

If no other method of service is successful, a party may apply for a substituted service order (RTB-13 - Application for Substituted Service), asking for an order allowing service by email, and provide evidence of a history of communication between the parties at that email address. Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.

If an email address given for the purposes of serving documents changes at any time, the onus is on the party to ensure an updated address is provided to the other party, or that the other party is advised that it is no longer acceptable to serve documents at the email address provided. If such notice is received, email service is no longer a method of service available to serve documents and another method of service set out in the legislation must be used instead.

Section 71(1) of the *Act* authorizes the RTB Director to make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
(b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;
(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

The tenant testified that the undocumented history of communication between the parties throughout the tenancy included the practice of communicating mainly by email.

Further to the tenant's credible testimony, I find the tenant has established that the tenant sufficiently served the landlord with the Notice of Hearing and Application for Dispute Resolution by email effective three days after sending, that is, on March 12, 2021.

Preliminary Issue

The tenant applied for multiple remedies under the *Act* some of which were not

sufficiently related to one another.

Section 2.3 of the *Rules of Procedure* states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all the claims on the Tenants' application except for the following:

- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Four Month Notice") pursuant to section 49;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Burden of Proof

Section 49(6) of the *Act* provides that upon receipt of a Notice to End Tenancy the tenant may, within thirty days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If a tenant disputes a notice by the 30-day deadline, the notice is suspended until an arbitrator makes a decision. A tenant must move out within four months of receiving the notice if they do not dispute it.

If the tenant files the application, the landlord bears the burden to prove they have valid grounds to terminate the tenancy. The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Four Month Notice") pursuant to section 49;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant testified that they received the Four Month Notice from the Landlord which was sent by registered mail. The tenant testified that the Four Month Notice is undated and signed by the landlord; the effective date is May 31, 2021. The tenant submitted a copy of the Four Month Notice as evidence.

The Four Month Notice provides information for tenant who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 30 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The tenant disputed the Four Month Notice by applying for Dispute Resolution within the required timeframe.

The tenant has not accepted the Four Month Notice and seek cancellation of the Notice.

The landlord failed to attend the hearing. The burden to support the reason to end the tenancy rests with the landlord.

Analysis

Based on the above, the testimony and evidence of tenant, a review of the relevant documents, and on a balance of probabilities, I find as follows.

I find that the landlord was served with the Notice of Hearing and Application for Dispute Resolution.

The landlord failed to attend the hearing to confirm that the landlord issued the Four Month Notice and to provide testimony on why the tenancy needs to end. A landlord who issues a Four Month Notice bears the burden of proof that there is sufficient reason to end a tenancy.

Since the landlord has failed to attend the hearing to provide testimony and pursue enforcement of the Four Month Notice, the Four Month Notice is cancelled.

The tenant's application to cancel the Four Month Notice is successful. 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. I order the landlord to repay the $100.00 fee that the tenant paid to make application for dispute resolution. The tenant may deduct $100.00 from the monthly rent on a one-time basis only.

Conclusion

The landlord failed to attend the hearing to provide testimony and pursue enforcement of the Four Month Notice. The Four Month Notice is cancelled.

The tenancy continues until ended in accordance with the Act.

The tenant's other claims are dismissed with 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.

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Dated: April 07, 2021

Residential Tenancy Branch