



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, MT, FFT

Introduction

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

- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of Rental Unit (the "**Notice**") pursuant to section 49;
- more time to make an application to cancel the Notice pursuant to section 66; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:46 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's agent ("**DH**") attended the hearing and was 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 DH and I were the only ones who had called into this teleconference.

The tenant did not submit any documentary evidence in support of his application. The landlord submitted a single document, a copy of the Notice, into evidence. DH testified that the tenant was served with a copy of the Notice.

Preliminary Issue – Name of Landlord

On the application, the tenant misspelled the landlord's name by transposing the second and third letters of the first name. Additionally, the tenant neglected to include the word "Association" at the end of the landlord's name, which forms part of its legal name. I order that the application be amended to correct this misspelling and omission. The correct spelling of the landlord's name is on the cover of this decision.

Preliminary Issue - Effect of the Tenant's Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

In this case, the tenant has applied for more time in which to dispute the Notice. He bears the evidentiary burden to prove that he is entitled to such an order. If he discharges this evidentiary burden, the onus then shifts to the landlord to prove that the Notice was issued for valid reasons.

As the tenant failed to attend the hearing, I find that he has failed to discharge his evidentiary burden to prove he is entitled to an extension of time in which he may dispute the Notice.

I dismiss this portion of the tenant's application, without leave to reapply.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If not, is the landlord entitled to an order of possession.

Background and Evidence

While I have considered the documentary evidence and the testimony of DH, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of DH's testimony and my findings are set out below.

The tenant rents an apartment from the landlord (the "**rental unit**"). DH testified that the landlord purchased the building the rental unit is located in four years ago, and that when it purchased the building, the tenant was already living in the rental unit. He testified that he is not aware when the tenancy started and does not believe there is a written tenancy agreement. He testified that the tenant pays \$950 in monthly rent. He is unaware if the tenant paid a security deposit or pet damage deposit at the start of the tenancy or if the landlord holds any amount in trust for the landlord.

DH testified that he served the tenant personally with the Notice on December 23, 2020. It listed an effective date of April 30, 2021 and indicated the reason for issuing the Notice was to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

The tenant applied to dispute the Notice on March 24, 2021.

Analysis

Section 49 of the Act, in part, states:

Landlord's notice: landlord's use of property

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

[...]

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

[...]

(7) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]* and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

[...]

(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.

(9) 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 tenant received the Notice on December 23, 2021 and did not dispute the Notice until March 24, 2021. Section 49(8) of the Act requires the tenant to dispute the Notice within 30 days of receiving the Notice (that is, January 23, 2021). The tenant failed to do this.

As such, section 49(9) of the Act applies, and the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (that is, April 30, 2021).

I have reviewed the Notice and find that it meets the form and content requirements of the section 52 of the Act.

Accordingly, I find that the landlord is entitled to an order of possession effective seven days after it serves the tenant with a copy of this decision and attached order in accordance with the Act.

Conclusion

I dismiss the tenant's application, in its entirety, without leave to reapply.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within seven days of being served with a copy of this decision and attached order by the landlord.

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, 2021

Residential Tenancy Branch