



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, LRE, OLC, LAT

Introduction

On April 19, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting to cancel a Four Month Notice to End Tenancy for Landlord Use of Property. The Tenant also applied for the following relief:

- To suspend or restrict the Landlords right of entry
- For authorization to change the locks
- For an order for the Landlord to comply with the Act, Regulation, or tenancy agreement.
- For a monetary order for money owed or compensation for damage or loss under the Act, Regulation of tenancy agreement.

The matter was set for a conference call hearing. The Landlord and Tenant appeared at the hearing. The Landlord was assisted by legal counsel. The hearing process was explained, and the participants were asked if they had any questions. The parties testified that they have received each other’s evidence. 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. The parties were informed that recording the hearing is not permitted.

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 matter to determine is whether or not the tenancy is ending based on issuance of a notice to end tenancy. The Tenant's other claims are dismissed with leave to reapply.

Issue to be Decided

- Is the tenancy ending based on the issuance of a notice to end tenancy?

Background and Evidence

The Landlord and Tenant both testified that the most recent tenancy agreement began on September 1, 2019, as a fixed term tenancy to continue until August 31, 2021. Rent in the amount of \$1,800.00 is to be paid to the Landlord by the first day of each month. The Tenant provided a copy of the tenancy agreement.

The Landlord's counsel stated that the Landlord issued letters to the Tenant regarding ending the tenancy; however, a proper notice to end tenancy using the government form was not issued to the Tenant until May 27, 2021. The Landlord's counsel stated that the Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlords Use of Property.

The Tenant confirmed that his application to cancel a notice to end tenancy is related to the letters he received from the Landlord. The Tenant stated that he received a Four Month Notice to end tenancy from the Landlord in May 2021. The Tenant stated that he never received a Two Month Notice.

The Tenant did not amend his application to include a dispute of a Two Month Notice or a dispute of a Four Month Notice.

Analysis

Section 44 of the Act provides that a tenancy ends in prescribed circumstances when there is a fixed term tenancy agreement that requires the Tenant to vacate the rental unit at the end of the term.

Section 13.1 of the Residential Tenancy Regulation provides 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. The circumstances are:

- (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. **[my emphasis]**

Section 44 of the Act provides that 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];*

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) *be signed and dated by the landlord or tenant giving the notice,*
- (b) *give the address of the rental unit,*
- (c) *state the effective date of the notice,*
- (d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
- (d.1) *for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) ***when given by a landlord, be in the approved form.***

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

I find that the parties entered into a fixed term tenancy agreement to continue until August 31, 2021. At the time the tenancy agreement was signed by the parties there was no requirement that the Tenants must move out of the residential unit at the end of

the fixed term tenancy. I find that there is no term in the tenancy agreement that indicates the Landlord intended to occupy the unit at the end of the fixed term.

I find that the letters that the Landlord issued to the Tenant are not effective notices to end the tenancy.

I find that the Tenant's application to cancel a notice to end tenancy received from the Landlord is successful. The tenancy will continue until ended in accordance with the Act.

The Tenant's application did not include a dispute of any other notice to end tenancy. The Tenant testified that he did not receive a Two Month Notice from the Landlord. As a dispute of Two Month Notice is not properly before me, I make no finding on that issue.

The Landlord is at liberty to apply for dispute resolution if the Landlord wants to pursue enforcement of a Two Month Notice that was allegedly issued to the Tenant.

The Tenant has leave to reapply for dispute resolution to pursue his claims that were severed from his application.

Conclusion

The Tenant's application to cancel a notice to end tenancy is successful. The tenancy will continue until ended in accordance with the Act.

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: August 24, 2021

Residential Tenancy Branch