



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This reconvened hearing was scheduled pursuant to an Interim Decision issued on December 3, 2021 in response to a tenant's application for cancellation of a One Month Notice to End Tenancy for Cause and orders for the landlords to comply with the Act, regulations, or tenancy agreement. The Interim Decision should be read in conjunction with this final decision.

Both parties appeared for both hearing dates. The parties were affirmed and the parties were ordered to not make an unofficial audio recording of the proceeding.

At the outset of the reconvened hearing, I explored whether a mutual agreement had been reached between the parties as that was one of the objectives in deciding to adjourn the hearing on December 3, 2021. The parties provided consistent statements to me that a mutual agreement was not reached during the adjournment; however, the landlord stated they remained open to further exploring mutual agreement during the reconvened hearing.

The tenant stated she was moving out of the rental unit pursuant to the Two Month Notice to End Tenancy for Landlord's Use of Property dated August 30, 2021. The landlord made another attempt at ending the tenancy pursuant to a mutual agreement rather than the Two Month Notice but that was unsuccessful. I proceeded to explore when the tenant will vacate the rental unit to provide the parties with certainty and resolution to their dispute, especially given the acrimony between the parties.

Issue(s) to Determine:

Has the tenancy already ended pursuant to a Two Month Notice? If so, when will the tenant vacate the rental unit and should the landlords be provided an Order of Possession?

Background and Evidence

The landlord had issued two notices to end tenancy to the tenant: a One Month Notice to End Tenancy for Cause ("One Month Notice") dated July 31, 2021 that the tenant filed to disputed; and, a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") dated August 30, 2021 that the tenant did not file to dispute. Both notices were submitted into evidence by the tenant.

The tenant stated at both hearing dates that she has decided to accept the end of the tenancy pursuant to the Two Month Notice even though she has yet to vacate the rental unit and the effective date of the Two Month Notice has passed. The landlord had stated that withdrawal of the Two Month Notice may be appropriate given the landlord who intended to move into the rental unit can no longer move in due to her medical condition. The tenant did not consent to withdrawal of the Two Month Notice.

During the hearing of March 24, 2022, the parties proposed a few different dates for the tenant to vacate the rental unit and they ultimately agreed that the tenant may occupy the rental unit up until 1:00 p.m. on May 31, 2022.

A tenant's entitlement to compensation equivalent to one month of rent where a tenancy ends pursuant to a Two Month Notice was discussed and the tenant notified the landlords that she intends to pay rent for April 2022 and withholding rent for May 2022 as compensation for receiving the Two Month Notice.

I also informed the parties of a tenant's right to end a tenancy early where a tenancy is ended pursuant to a Two Month Notice, as provided under section 50 of the Act, by giving the landlord 10 days of advance written notice.

The landlord requested the tenant's consent to serve her with notices of entry for future showings of the unit to prospective tenants, via email. The tenant consented to being served with notices of entry by email; however, the emailed notice will be deemed received three days after it is sent. In addition to referring the parties to section 29 of

the Act, I referred the parties to the Residential Tenancy Branch website for useful information concerning a landlord's right to enter and notice of entry requirements under the page entitled "Landlord's Access".

The parties discussed and were informed that the tenant's obligation to leave the rental unit is "reasonably clean" and undamaged except for reasonable wear and tear. For further information concerning a tenant's and a landlord's obligations concerning maintenance of a rental unit, I referred the parties to Residential Tenancy Branch Policy Guideline 1.

Before ending the teleconference call, both parties confirmed there were no other issues requiring resolution with respect to the remainder of time the tenant has in possession of the rental unit.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

In disputing the One Month Notice and having the hearing set for December 3, 2021, the validity of the One Month Notice was unheard and undecided when the effective date of the Two Month Notice took effect. Where a tenant does not file to dispute a Notice to End Tenancy the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice. Although the tenant did not file to dispute the Two Month Notice, she had introduced it into evidence and I was able to verify that it meets the form and content requirements of the Act. As such, I find the tenant to be conclusively presumed to have accepted that the tenancy would come to an end pursuant to the Two Month Notice by the stated effective date of October 31, 2021 or November 30, 2021 depending on when she received the Two Month Notice. As for withdrawal of a notice to end tenancy, withdrawal requires consent of both parties and the tenant did not give consent for withdrawal of the Two Month Notice. As such, I find the tenancy came to an end pursuant to the Two Month Notice and it is unnecessary for me to further consider whether the tenancy should be ended for cause.

Since the tenancy is already over pursuant to the Two Month Notice, but the tenant remains in possession of the rental unit and the landlord is entitled to regain possession of the rental unit, I explored the date the tenant shall vacate the rental unit to bring resolution to the parties and in keeping with section 62 of the Act which provides, in part:

- 62** (1) Subject to section 58, the director has authority to determine
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
 - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

During the hearing, the parties agreed that the tenancy shall end no later than May 31, 2022 at 1:00 p.m. and I honour that agreement by providing the landlords with an Order of Possession effective at 1:00 p.m. on May 31, 2022.

Given the parties confirmed there were no further issues that require resolution or may require resolution during the remainder of time the tenant remains in possession of the unit, I dismiss the tenant's Application for Dispute Resolution.

Conclusion

The tenancy has already ended pursuant to a Two Month Notice and the landlords are provided an Order of Possession effective at 1:00 p.m. on May 31, 2022 to regain possession of the rental unit at the date and time agreed upon by the parties during the hearing.

The tenant's Application for Dispute Resolution is dismissed.

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: March 25, 2022

Residential Tenancy Branch