



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL-4M, OPM

Introduction

On January 3, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit pursuant to Section 49 of the *Residential Tenancy Act* (the “*Act*”) and seeking a Mutual Agreement to End Tenancy pursuant to Section 55 of the *Act*.

The Landlord attended the hearing, with J.C. attending as an agent for the Landlord. The Tenant attended the hearing as well, with K.M. attending as an advocate for the Tenant. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing and evidence package by hand to the Tenant on January 12, 2022, and the Tenant acknowledged receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was duly served with the Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Tenant advised that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit?
- Is the Landlord entitled to an Order of Possession based on a Mutual Agreement to End Tenancy?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties could not agree when the tenancy started, but it was sometime on or around September of 2006 approximately. Rent was currently established at an amount of \$700.00 per month and was due on the first day of each month. The Landlord stated that a security deposit of \$300.00 was also paid; however, the Tenant stated that a security deposit of \$350.00 was paid. The Landlord did not create a written tenancy agreement as is required by the *Act*. The Landlord was cautioned of this error for future tenancies.

The Landlord advised that he was given the rental unit from his parents when he was 19 years old, and he did not know anything about the *Act* when managing this property. When asked about his request for an Order of Possession based on the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit, he referred to the notice that he submitted as documentary evidence. This was not an approved form required by the *Act*, but a document that he drafted himself entitled "4 months' notice to vacate." Clearly, and by the Landlord's own admission, he did not have any knowledge of his rights and responsibilities under the *Act*, and this document did not meet the requirements of the *Act* to support the granting of an Order of Possession based on this type of notice.

The Landlord then made submissions on this document pertaining to his request for an Order of Possession based on a mutual agreement. He initially indicated that he served this document to the Tenant because of different personal issues with his family, and as the Tenant had lived there for a significant length of time, he wanted to give her ample time to move out. The specific wording of the notice was "You are hereby given notice to vacate the above premises within 120 days from August 1st, 2021. You are required to surrender possession of the above premises to the landlord on or before December 1st, 2021."

When he was asked what his intention was when he served this document, he did not ever say it was because it was his intent to mutually agree to end the tenancy. He claimed that it only became a mutual agreement when the Tenant also signed it. He then contradictorily testified that it was his intention all along that this document was to be a mutual agreement to end tenancy despite the wording of the document. When he was asked why he applied for an Order of Possession over a month after the date he stipulated in his document as the effective end date of the tenancy, he claimed that "maybe [the Tenant] could have used another month" and that he was being lenient. He submitted that much of his actions, as a Landlord, have been solely as a result of information he has received from other people he knew.

The Tenant advised that when the Landlord served her this document, she asked him why it was being served and the Landlord told her that he was selling the house. He later informed her that he would be renting the house, and when she informed him that this was not acceptable, he became upset and hostile. She stated that the Landlord has now provided a third reason, of occupying the house, as a reason to end the tenancy. While she acknowledged that she signed this document, it was not her belief that this was a mutual agreement to end tenancy.

K.M. advised that the Landlord had attempted to ask for an increase in rent of \$2,000.00. She submitted that the Tenant was old and was nervous when the Landlord served her that document. It is her belief that this is not a legal document.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Given that the Landlord clearly did not use the approved form to ever consider a request for an Order of Possession based on the Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit, I dismiss this request in its entirety.

I note that Section 55 of the *Act* allows a Landlord to submit an Application for Dispute Resolution seeking an Order of Possession based on a Mutual Agreement to End Tenancy, and I must consider if the Landlord is entitled to that Order if the agreement is valid. As well, Section 44 of the *Act* allows a tenancy to end by mutual consent of both the Landlord and the Tenant.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

In considering this matter, I have reviewed the document that the Landlord also claims to be a mutual agreement to end tenancy. When the wording of this document is given a plain reading, in my view, there is clearly no sentiment conveyed which would even remotely suggest that this was a mutual agreement. I find that this is consistent with the Landlord's original testimony that there was no intention on his part to mutually end the tenancy when the document was presented to the Tenant. Only later, when he was questioned about his intention during the hearing, and it became clear to him that this document may not be considered a mutual agreement, did he then provide contradictory and illogical testimony about his intention.

Furthermore, in the Landlord's details of dispute in his own Application, he noted that "the notice was not disputed within 15 days after the notice was given and signed." If it was truly his belief that this was a mutual agreement to end a tenancy, there would be no 15-day timeframe to dispute it as it does not make any logical sense that a mutual agreement would be up for dispute. Moreover, given that the Landlord applied for an Order of Possession on two different types of notices, I find that this supports the finding that it was not his belief that this document was truly a mutual agreement to end tenancy. As well, given that his sole submission of why he believed this document was a mutual agreement was simply because the Tenant signed it, I find that this point carries little weight. In assessing the entirety of the Landlord's submissions, I find that

the inconsistencies and the dubious nature of the Landlord's submissions cause me to doubt his credibility on the whole.

While I acknowledge that the Tenant did sign this document, given the specific wording of this document, and the Tenant's submission that it was not her belief that this document was a mutual agreement to end the tenancy, I am not satisfied that this document would constitute a such an agreement.

Given the Landlord's inconsistent and contradictory submissions, in conjunction with his admitted, clear lack of knowledge of the *Act*, and as the Landlord was of the belief that he could create his own notice to end a tenancy, I reject the Landlord's position in this Application. Ultimately, I am not satisfied that this document is a mutual agreement to end tenancy. As such, I dismiss this Application in its entirety. In addition, I caution the Landlord from relying on information, about his responsibilities and obligations as a Landlord, provided to him from his acquaintances. It is clear, in this case, that he cobbled together pieces of random information to come to his own conclusions in attempting to end the tenancy.

Conclusion

The Landlord's Application is dismissed without leave to reapply. This tenancy continues until ended in a manner 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: April 4, 2022

Residential Tenancy Branch