



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on February 14, 2022 seeking an order to cancel the Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the “Four-Month Notice”). Additionally, they were seeking the Landlord’s compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 20, 2022. In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions.

Preliminary Matter – Tenant’s notice to the Landlord

To proceed with this hearing, I must be satisfied that the Tenant made reasonable attempts to serve the Landlord with the Notice of Dispute Resolution for this hearing. This means the Tenant must provide proof that they served the document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The Tenant set out that they served the Notice via registered mail on February 18, 2022. They presented a receipt of their purchase for that purpose, as well as the mailing label showing the tracking number. The Tenant stated this package they sent included all the evidence they intended to rely on for this hearing.

The Tenant also provided they had a dialogue with the newer property manager. In that dialogue the property manager referred to this current hearing. The Tenant also provided that

the property manager knew of the Landlord previously issuing a notice to end this tenancy which is at issue in this hearing.

Based on the Tenant's submissions and evidence, I accept they served the Notice and their evidence in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Landlord's absence.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the Four-Month Notice?

Is the Landlord obligated to comply with the *Act*, the *Residential Tenancy Regulation*, or the tenancy agreement?

Is the Tenant eligible to recover the filing fee for this application pursuant to, s. 72 of the *Act*?

Background and Evidence

The Tenant submitted a copy of the tenancy agreement that have with the Landlord for the tenancy that commenced on September 1, 2021. The agreement shows the basic rent amount of \$2,332 payable on the first of each month.

The agreement specified a fixed-term tenancy ending on August 31, 2024, indicating the tenancy would continue on a month-to-month basis after that. Though *not* indicated, a reason for the Tenant vacating at the end of the fixed term is "House is put up for sale."

The Tenant provided a copy of the four-page Addendum. This contains the clause:

The parties agree that the tenancy shall end at midnight of the last day of the tenancy (the rental period) or *if the landlord passes & the property is put on the market*. 2 months notice will be given to the tenants in accordance with the act.

The Tenant included a copy of the letter they received from the Landlord dated February 1, 2022. This attached a Two Month Notice to End Tenancy for the Landlord's Use of Property (the "Two-Month Notice") signed by the Landlord on that same date. The letter advised the Tenant of "termination of tenancy effective June 30, 2022." This date was extended to July 9, 2022. This advised a family member would "be moving into the property July 10th, 2022 to complete extensive renovations & the property will be listed for sale at that time."

The second page of the Two-Month Notice indicates “The child of the landlord or landlord’s spouse” would occupy the rental unit.

The Tenant submits the Landlord cannot end the tenancy in this manner, given that the tenancy is a fixed 3-year term. In the hearing they described trying to explain this to the Landlord; however, they got no response from the Landlord on this point.

Regarding the Addendum, the Tenant submits the term, as reproduced above, can’t be in the agreement as it runs counter to the provisions of the *Act*. They submitted documents as evidence setting out the status of the law in British Columbia on this point. This provided that the only way a landlord or tenant can end a fixed-term tenancy is by mutual agreement. The excerpt provided by the Tenant also sets out s.5 of the *Act*, and notes: “. . . that if a term contradicts the legislation, it may not be enforceable.”

In the hearing, the Tenant also clarified that, although served a Two-Month Notice by the Landlord, they indicated on their Application it was a Four-Month Notice because the Landlord gave an indication that there would be renovations in the rental unit before they make it ready for sale. The material provided by the Tenant also sets out that “Any [Four-Month Notice] received by a tenant on or after July 1, 2021 is invalid and the landlord must end the tenancy under a new process by applying to the Residential Tenancy Branch.”

Analysis

The *Act* s. 49(3) provides that a landlord may end a tenancy by giving a Two Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

When a landlord issues a Two Month Notice and a tenant files an application to dispute the matter, a landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

In this case, the Landlord issued the Two-Month Notice pursuant to s. 49(3), and I accept the Tenant’s evidence that they received this document on February 1, 2022. Because the Tenant filed their Application on February 14, 2022, I find that they disputed the Notice within the timeframe required under the *Act*.

In the absence of the Landlord or any evidence from the Landlord to support the reason listed in the Two Month Notice, I find that it must be cancelled. The tenancy shall continue until it may otherwise legally end under the *Act*.

Continuing on this point, I refer to the *Act* s. 49(2)(a)(iii), which specifies: “a landlord may end a tenancy [for the purposes of their own/family member’s use, for sale] . . . (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.”

Additionally, s. 49(2)(b)(iii) provides that a landlord may not end a tenancy “not earlier than the date specified as the end of the [fixed-term] tenancy” where a landlord intends in good faith to demolish or convert the rental unit.

A landlord wishing to end a tenancy for renovations or repairs must do so by application for dispute resolution, as per s. 49.2.

As the Tenant raised in this matter, I find the term reproduced from the Addendum, as well as the incorrect indication provided on page 2 of the tenancy agreement, both reproduced above, run counter to the provisions of the *Act* specific to a fixed-term tenancy. The *Act* s. 5 provides that parties may not avoid/contract out of the *Act*, and “Any attempt to avoid or contract out of this *Act* or the regulations is of no effect.”

I so order the term governing possible Landlord sale as a reason to end the tenancy, as it appears in the Addendum, is of no force or effect.

Conclusion

For the reasons above, I order the Two Month Notice issued on February 1, 2022 is cancelled and the tenancy continues.

As the Tenant was successful in this Application, I find they are entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 24, 2022