



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDC

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The tenant applied for compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) and a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement, or the regulation.

The tenant and the landlord's agent attended, they were affirmed into the hearing and initial testimony began.

I have reviewed all oral, photographic, and documentary evidence before me; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the tenant's application been filed within the required time limit under the Act?

If so, is the tenant entitled to monetary compensation?

Background and Evidence

The tenant testified and confirmed the information in his application that the tenancy began on September 2011, and ended on September 30, 2019. A written tenancy agreement was not filed in evidence.

The tenant testified that he vacated the rental unit on September 30, 2019, in response to the 2 Month Notice served to him by the landlord, dated July 24, 2019. Filed in evidence was a copy of the 2 Month Notice.

In response to my inquiry, the tenant also confirmed that he submitted and completed his application for dispute resolution near midnight on September 30, 2021.

Analysis

Section 44 of the Act provides for how a tenancy ends, more particularly for consideration in this case, the tenancy ends when a tenant vacates the rental unit.

In the case before me, I find the undisputed evidence provided by the applicant/tenant is that this tenancy ended on September 30, 2019, when the tenant vacated the rental unit.

Under section 60 of the Act, which governs this dispute, an application for dispute resolution *must* be made ***within*** 2 years of the date that the tenancy to which the matter relates ends. What this means, is that the latest either party here could file an application for dispute resolution relating to this tenancy was *September 29, 2021*. (emphasis added)

I find this requirement is distinguished from a general limitation period under the *Limitation Act*, which states in relevant part that "...a claim must not be commenced more than 2 years ***after*** the day on which the claim is discovered". (emphasis added)

For further clarification, ***within*** 2 years in this case, can be explained as follows: the first year on a ***calendar*** year basis would run from September 30, 2019, when the tenant vacated the rental unit, until September 29, 2020. The second year would then start on September 30, 2020, and run until September 29, 2021.

Therefore, I find that the "***within*** 2 years of the date that the tenancy to which the matter relates ends" provision of section 60(1) of the Act requires that the application in this case be filed no later than September 29, 2021, as the start date commenced on the date of the tenancy ending September 30, 2019. I find a common meaning of the word "within" is "before the end of".

I find it important to note that other sections of the Residential Tenancy Act use the word “**after**” in calculating timelines, such as providing that a tenant may dispute a notice to end a tenancy within a designated number of days **after** receipt of a notice.

For the reasons above, I find the tenant’s application filed on September 30, 2021, was outside the statutory time limit and is barred from being heard.

I therefore dismiss the tenant’s application, without leave to reapply.

Conclusion

The tenant’s application is dismissed, without leave to reapply, as it was filed outside the statutory time limit.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 10, 2022

Residential Tenancy Branch