



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

The former Tenant (hereinafter, the “Tenant”) filed an Application for Dispute Resolution on March 29, 2023 seeking an order to cancel a Two-Month Notice to End Tenancy for Landlord’s Use of the Property (a “two-month notice”). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 28, 2023.

Both the Tenant and the Landlord attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, the parties confirmed they received the prepared documentary evidence of the other in advance. The Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant. With this assurance from both parties, I proceeded with the hearing as scheduled.

Preliminary Matter – Issue to be Decided

The Tenant applied for a cancellation of a Two-Month Notice issued by the Landlord. By the time of the tenancy, the Tenant had moved out from the rental unit, thereby ending the tenancy. Because the tenancy has already ended, I find there is no need for consideration of the validity of a supposed two-month notice issued by the Landlord.

The Act s. 64(3)(c) allows an arbitrator to amend an application for dispute resolution. I so amend the Tenant’s Application in line with the relief they are seeking -- in this

particular case, they are seeking compensation in line with the Landlord issuing a two-month notice to end tenancy. This key issue I must resolve is listed below.

Issue(s) to be Decided

Is the Tenant entitled to compensation for the Two-Month Notice, pursuant to s. 51 of the *Act*?

Is the Landlord obligated to comply with the legislation and/or the tenancy agreement?

Is the Tenant entitled to reimbursement of the filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided key pages of the tenancy agreement they had in place with the Landlord. Both parties confirmed the basic terms of the tenancy in the hearing: the tenancy started on August 1, 2018, for \$2,750 per month, increasing to \$2,850 per month in the year preceding the end of this tenancy.

The tenancy ended on April 6, 2023 when the Tenant moved out from the rental unit.

On their Application, the Tenant stated: “Not disputing end of tenancy (April 30) but landlords demand for March rent when [the Landlord] owes final months rent.”

In the hearing the Tenant set out their understanding that the Landlord and the Landlord acquaintance were going to be needing the use of the rental unit, and that was the reason they moved out. This was in reference to the Landlord’s letter to them dated February 20 that set out the following:

My partner and I would like to move into the house that you currently rent no later than the end of April, as mutually agreed upon in January. I was under the impression that you and I accepted this agreement and shook hands, I would have no need to draft and send you an official letter, as per your suggestion. Now, I must prepare to move from my current home to the house you rent and yet, I have not received a response as to when you intend to move out.

...

Thus, please accept this letter as a notice that you vacate the house by the end of April, as per our original agreement.

The Tenant proposed that the Landlord owes one month of rent because the Landlord indicated they were going to be using the rental unit for their own personal use. What the Tenant recalled in the hearing was that the Landlord had previously “indicated that there might be some need that [the Landlord] would have in the house.”

The Tenant did not pay rent for March 2023, in line with their rationale that the Landlord was using the rental unit for their own purpose and ending the tenancy for this reason. The Tenant was aware that such a reason for ending a tenancy entails one month’s rent amount compensation to a tenant in these circumstances. The Tenant stated clearly that they used the final month’s rent amount – *i.e.*, the full rent owing for March 2023 – as payment from the Landlord for ending the tenancy for this reason.

Because the Tenant did not pay rent for March 2023, the Landlord issued and served a 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) on March 20, 2023, for the amount of \$2,750 that was owing on March 1, 2023.

In the hearing, the Landlord described the issue of ending the tenancy. They had talked with the Tenant in mid-January about the need for ending the tenancy; this was a “friendly talk”. The Landlord had suggested, as early as October in the year prior, that because of their money situation they had a need for the house. They stated maybe February or March for the Tenant to find some place, and according to the Landlord the Tenant stated “maybe April” and then the Landlord agreed. The Landlord asked “if a letter is needed”, and the Tenant stated that a handshake was enough.

The Tenant applied for this hearing on March 29, 2023. This was after a letter from the Landlord via their counsel dated March 28, 2023 wherein the set out the following points:

- presumably the Tenant was referring to s. 49(3) of the *Act* which provides that a landlord may end a tenancy if a landlord/close family member intends in good faith to occupy the rental unit
- an oral agreement was made wherein the Tenant would find more affordable accommodations and would vacate the rental unit by the end of April
- the February 20 letter referred only to the Landlord’s “intentions with respect to the occupancy of the Property after the date [the Tenant] agreed to vacate, being by the end of April”
- the letter was not intended to be a notice to end tenancy by s. 49(3) of the *Act* – it was not the approved form

- the Tenant is not entitled to one month's rent compensation (*i.e.*, "free rent") and is obligated to pay rent
- the Landlord's proposed arrangement: payment of March rent; a signed mutual agreement to end tenancy; and April rent waived if the Tenant vacates by April 15.

In the hearing, the Landlord reiterated that the February 20 letter cannot be seen as a notice to end tenancy. The Tenant re-stated their position that they took the February 20 letter as the Landlord's indication that they wanted the rental unit for their own use, and they moved out because of that.

Analysis

Under s. 49 of the *Act* a landlord may end a tenancy if they or a close family member intends in good faith to occupy the rental unit. Within this s. 49(2)(a) provides that a landlord may end the tenancy "by giving notice to end the tenancy effective on a date that must be . . . not earlier than 2 months after the date the tenant receives the notice."

Regarding form, s. 49(7) specifies that "A notice under this section must comply with section 52 [*form and content of notice to end tenancy*]." Section 52(e) refers to the "approved form". In the case of a Two-Month Notice to End Tenancy for Landlord's Use of Property, this is a Residential Tenancy Branch form "RTB-32".

There is compensation awarded in certain circumstances where a Landlord issues a Two-Month Notice. This is covered in s. 51:

- (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and . . . that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50, the landlord must refund the amount paid.

I find the Landlord did not end the tenancy by using RTB-32 as would normally be required where a landlord is unilaterally ending the tenancy. I find the tenancy ended by mutual agreement instead.

The section in the *Act* corresponding to compensation refers to “A tenant who receives a notice to end tenancy under section 49”. I find that compensation is granted to a tenant through this provision only where a notice to end tenancy under section 49 – that is, precisely, the approved form as per s. 52 – is used by a landlord. The Tenant did not challenge the validity of the Landlord ending the tenancy; therefore, I find it was a mutual agreement. The Landlord’s February 20 letter was clarification to the Tenant about their agreement and stating their intention that the Tenant should move out by the end of April. That does not mean the Landlord ended the tenancy as per s. 49 of the *Act*.

I find that the s. 51 provision re: compensation to the Tenant does not apply to this present situation. There was no authority for the Tenant to withhold March 2023 rent.

For this reason, I dismiss the Tenant’s Application in its entirety. They are not entitled to reimbursement of the Application filing fee.

The *Act* s. 62 provides that an arbitrator may make any order necessary to give effect to the rights and obligations of a party to a tenancy agreement. Following this, s. 65 provides that any money owing by a tenant to a landlord must be paid. Under this authority I find the Tenant shall pay the amount of March 2023 rent to the Landlord because they had no authority to withhold that amount. I grant a Monetary Order of \$2,850 to the Landlord for this reason.

Conclusion

I dismiss the Applicant’s Application, without leave to reapply.

Pursuant to s. 67 of the *Act*, I grant to the Landlord a Monetary Order in the amount of \$2,850. The Landlord is provided with this Order in the above terms, and they must serve it to the Tenant as soon as possible if necessary. Should the Tenant fail to comply with this Order, the Landlord may file the Order in the Small Claims Division of the Provincial Court where it may be enforced as an Order of that Court.

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 1, 2023

Residential Tenancy Branch