



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing was scheduled to deal with a tenant's application to deal with a non-compliant "notice to evict" received from the landlord and orders for the landlord comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions and to respond to the submissions of the other party.

During the hearing, the parties mutually agreed to end the tenancy in a partial resolution of this dispute. I have ordered the tenancy ended pursuant to that mutual agreement to end tenancy by way of this decision and the Order of Possession that accompanies it.

Issue(s) to be Decided

1. What are the terms of the mutual agreement to end tenancy and what is the date the tenancy shall end?
2. Is it necessary to issue orders to the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced January 15, 2015 and the tenant paid a security deposit of \$300.00. The tenant is required to pay rent of \$600.00 on the 15th day of every month. The rental unit is a self-contained basement suite; however, laundry machines are in the basement suite which the landlord accesses twice a week.

The tenant filed this Application for Dispute Resolution because the landlord attempted to evict the tenant by way of text message sent January 18, 2015 with an effective January 25, 2015 and in doing so he was not afforded rights under the Act.

The landlord was of the position that the tenant had violated terms of their tenancy agreement but she acknowledged that she did not serve the tenant with a notice to end tenancy in the approved form. Rather, she relied upon a term in the tenancy agreement whereby the landlord could end the tenancy with one week's notice in attempting to end the tenancy by way of an oral conversation with the tenant and a text message she sent to him. The landlord also attempted to end the tenancy by preparing two Mutual Agreement to End Tenancy documents: one requiring the tenant to vacate on January 31, 2015 and the second requiring the tenant to vacate on February 15, 2015 but the tenant did not sign either one of them.

The tenant stated that he would agree to vacate the rental unit on March 1, 2015 and the landlord eventually agreed to end the tenancy on this date. The parties were also in agreement that the tenant would be required to pay rent for the period of February 15, 2015 – March 1, 2015.

The parties also raised an issue with respect to the landlord entering the rental unit to access the laundry machines. The landlord requested that the tenant or his guests not come or go or be in the rental unit during the period of time she wishes to do laundry. The tenant was not agreeable to this request. Rather, the tenant requested the landlord comply with the Act with respect to entering the rental unit. I informed the parties of the landlord's restricted right to enter the rental unit as provided under the Act.

Analysis

The Act prohibits parties from agreeing to contract outside the Act. As such, a term in a tenancy agreement that is inconsistent or non-compliant with the Act is not enforceable. The Act requires that a tenancy end in one of the ways permitted under section 44 of the Act. The term included in the tenancy agreement that provides for ending the tenancy with one week of notice is inconsistent with the Act and that term is not enforceable.

Where a landlord wishes to end the tenancy for cause the landlord must serve the tenant with a 1 Month Notice to End Tenancy for Cause in the approved form. Upon receipt of such a notice, the tenant has a right to dispute the notice within a certain amount of time. In this case, the landlord did not serve the tenant with a notice to end tenancy in the approved form..

The text message sent by the landlord on January 18, 2015 fails to comply with the Act in a number of way: it is not in the approved form; all of the required information is not included; the effective date could not be sooner than March 14, 2015; and, sending a

text message is not a recognized way to give the other party a document. Therefore, the text message of January 18, 2015 is not enforceable.

Another way to end a tenancy is by way of a mutual agreement to end tenancy, in writing. A mutual agreement to end tenancy in writing must provide the signature of both parties, among other things. In this case, the landlord did not have the tenant's signature agreeing to end the tenancy on a particular date. Therefore, neither of the Mutual Agreement to End Tenancy she prepared is enforceable.

The Act does permit a tenancy to end by way of an order of the Director, as delegated to an Arbitrator. Based upon the mutual agreement to end the tenancy reached between the parties during the hearing, I order this tenancy ended effective at 1:00 p.m. on March 1, 2015. In recognition of the mutual agreement and as provided under section 63 of the Act, I also provide the landlord an Order of Possession with that effective date to serve and enforce if necessary.

I further order that the tenant shall also be responsible for paying for rent for the period of February 15 – March 1, 2015 on or before February 15, 2015. However, I award recovery of the \$50.00 filing fee to the tenant and I authorize the tenant to withhold \$50.00 from the rent otherwise payable in satisfaction of this award.

Finally, it was apparent to me that the parties are unfamiliar with their respective rights and obligations under the Act. I decline the landlord's request to prohibit the tenant or his guests from accessing the rental unit during the times she wishes to do laundry in the basement as her request conflicts with the rights bestowed upon a tenant under section 30 of the Act. If the landlord is uncomfortable using the laundry machines in the basement suite she is at liberty to make other arrangements to do her laundry during the remainder of the tenancy. However, if she does choose to use the laundry machines in the basement suite, she may access the rental unit so long as her entry complies with the requirements of the Act. Below, I have reproduced certain sections of the Act that involve the landlord's restricted right to enter the rental unit [section 29] and giving the tenant written notice of entry [sections 88 and 90].

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[my emphasis added]

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

Conclusion

The tenant was successful in this application and the notice to end tenancy given by the landlord orally or by way of a text message is not enforceable. Nor, did the landlord obtain a valid mutual agreement to end tenancy in writing. Rather, I have ordered this tenancy to be at an end effective March 1, 2015 pursuant to a mutual agreement reached during the hearing. The landlord has been provided an Order of Possession effective at 1:00 p.m. on March 1, 2015 to serve and enforce if necessary.

The tenant is required to pay rent for the period of February 15, 2015 – March 1, 2015 on or before February 15, 2015; however, the tenant has been authorized to deduct \$50.00 from the rent payable to recover the filing fee paid for this application.

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: February 11, 2015

Residential Tenancy Branch

