



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MCKINNEY ENTERPRISES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MT, CNL, FF

Preliminary matters

At the start of the conference call 3 preliminary matters were addressed. The Tenant's Counsel questioned if the Residential Act had jurisdiction in this case as the tenancy has been in place since March 1995. Counsel said the Act does not have jurisdiction in tenancies with a term of over 20 years. The Arbitrator referred Counsel to section 4 (i) of the Act which says the Act does not apply to **tenancy agreements with a term longer than 20 years**. It was determined that this situation is a verbal tenancy: therefore it is deemed to be a month to month tenancy. There is no written agreement and no specific term. Consequently, the Arbitrator found that the term of this tenancy is month to month as there is no written tenancy agreement stating the terms of the tenancy. The Arbitrator found that the Residential Tenancy Act has jurisdiction in this situation.

The second issue was that both parties had submitted late evidence to the hearing. Both parties said they had time to review the evidence. The Tenants' Counsel said that they did not have time to respond to the Landlord's late evidence, which may prejudice his client. The Arbitrator said he would allow the late evidence and the parties could speak to the evidence if the evidence was relevant.

The third issue was that the Tenants had submitted an amendment to their application, but it was only to clarify the original application. It was determined that amendment did not change the issues to be disputed.

Introduction

This hearing dealt with an application for Dispute Resolution filed by the Tenants to cancel a 2 Month Notice to End Tenancy for Landlord's Use of the Property, for more time to make the application and to recover the filing fee.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on March 28, 2019 in accordance with section 89 of the Act. The Landlord confirmed receiving the Tenants' application and hearing package.

Issues to be Decided

1. Are the Tenants entitled to more time to make the application?
2. Are the Tenants entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started in March 1995. The Tenant said he originally rented the land with a dilapidated structure in it. The Tenant continued to say that he understood the agreement was that he would make payments to the owner and he could rebuild the structure and live in it. The Landlord said their understanding is that the Tenant is renting the property and it is a verbal month to month residential tenancy agreement. The Tenant said rent is \$320.00 per month normally paid every two months in the amount of \$640.00 in cash. No security deposit was paid for this tenancy.

The Tenants' Counsel said the Tenants are disputing the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated January 22, 2019 because the company named on the Notice to End Tenancy is unknown to the Tenants and the person who posted the Notice on the Tenant's door on January 22, 2019 is also unknown to the Tenants. Counsel said the Tenants were in disbelief that they received the Notice to End Tenancy as that was not the agreement they thought they had with the owner of the property. The Tenants do not believe the person serving them the Notice had any right to do so. The Tenants' Counsel said the Notice to End Tenancy is not valid and should be cancelled.

The Landlord's Counsel said the Landlord named on the 2 Month Notice to End Tenancy for Landlord's Use of the Property has a tenancy agreement with the owner of the property and there is a verbal sublease with the Tenants. Counsel said the Landlord named on the Notice to End Tenancy is the proper Landlord in this tenancy. Further the person who served the Tenants the Notice to End Tenancy D.E. is an agent for the Landlord.

The Arbitrator said the Tenants' application requests more time to make the application. The Arbitrator noted that the 2 Month Notice to End Tenancy for Landlord's Use of the Property was dated January 22, 2019 and the Tenants' application is dated March 25, 2019. The Arbitrator said the Tenants' application is 62 days after the Notice was posted on the Tenants' door. Further the Arbitrator said the front page of the 2 Month Notice to End Tenancy for Landlord's Use of the Property indicates that tenants have 15 days to dispute the Notice to End Tenancy or they are deemed to have accepted the end of the tenancy as stated on the Notice to End Tenancy. The Arbitrator continued to say more time can be granted to the Tenants if there is a serious and compelling reason why the Tenants could not make the application within the time limit of 15 days. The Arbitrator asked the Tenant and his Counsel if the Tenants had a serious or compelling reason with evidence to support why the application was late. Further the Arbitrator said if the Tenants cannot prove a serious or compelling reason for the application being filed late then the Tenants will not be granted more time to make the application and the Tenants' application will be dismissed due to late filing as per section 49 (8) & (9) of the Act.

The Tenants' Counsel requested a 15 minute recess. When the hearing reconvened the Tenant said he didn't make the application within the 15 day time limit because he didn't understand it, he didn't know the people who served him the Notice so he didn't think the Notice was valid and he has health issues that restricted his ability to make the application on time. The Tenants' Counsel said given the length of this tenancy and the circumstances in this situation the Tenant should be awarded more time to make the application.

The Landlord's Counsel questioned whether the female Tenant was able to have made the application on time.

The Tenant said the female Tenant has health issues as well which could have restricted her ability to make the application on time.

The Arbitrator asked if the Tenant had any evidence to support his health claims, that they were unable to make the application on time for health reasons.

The Tenants' Counsel said they did not submit any evidence to support the request for more time to make the application.

The Landlord's Counsel said they are willing to work with the Tenants and their Counsel to make ending this tenancy easier for the Tenants. The Landlord's Counsel said if the Tenants' application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property is unsuccessful the Landlord is willing to continue the tenancy until June 30, 2019 and the Tenants' rent for March and April 2019 will be returned and the Tenants do not have to pay any rent for May and June 2019. The Landlord's Counsel requested an Order of Possession for June 30, 2019 if the Tenants' application is unsuccessful.

The Tenants' Counsel asked if there is an appeal process for Residential Tenancy Branch decisions.

The Arbitrator indicated the decisions are final, but the Tenants can apply for a Judicial Review of the decision.

Analysis

Section 49 of the Act says:

(1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b) for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 4 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

(c) convert the residential property to strata lots under the Strata Property Act;

(d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Page one of the 2 Month Notice to End Tenancy for Landlord's Use of the Property Cause says that when a tenant receives this Notice to End Tenancy the tenant may dispute the Notice by making an application. Further it says the application must be made within 15 Days of receiving the Notice to End Tenancy. In this case the Tenant said he received the Notice to End Tenancy on January 22, 2019, therefore the Tenants should have made the application by February 7, 2019. The Tenants application is dated March 25, 2019.

Further a tenant may apply for more time to make an application if there is a serious and compelling reason for not making the application within the 15 days of receiving the Notice to End Tenancy. The Tenant said he did not understand the Notice, he didn't think it was valid because he didn't know the name on Notice or the person serving him and the Tenants have health issues.

Not understanding a Notice to End Tenancy is regrettable and in some circumstances understandable. The Tenants have hired Counsel for assistance so this it is not a serious or compelling reason to delay an application to dispute the Notice. Further the Tenants not knowing the person serving them or the name of the Landlord on the Notice to End Tenancy is grounds to dispute the Notice, but it is not a reason to delay an application. Health issues are a valid reason to be granted more time to make an application, but there has to be proof that the health issues are real and actually restricted the Tenants from making the application within the 15 days. The Tenants have not provided any medical evidence or proof their health issues delayed them in making the application. Consequently, I find that the Tenants have not established grounds to prove that they have a serious and compelling reason for more time to file their application. The Tenants request for more time to make his application to dispute the Notice to End Tenancy is dismissed without leave to reapply.

Consequently, I find the Tenants' application was filing late and pursuant to Section 49 (8) & (9) I dismiss the Tenants application without leave to reapply

Pursuant to section 55 of the Act the Landlord is entitled to an Order of Possession if a Tenants' application to Dispute a Notice to End Tenancy is unsuccessful. I award the Landlord an Order of Possession with an effective vacancy date of June 30, 2019.

As the Tenants application was unsuccessful I order the Tenants to bear the cost of the filing fee of \$100.00 which they have already paid.

Conclusion

The Tenants' application is dismissed without leave to reapply.

An Order of Possession effective at 1:00 p.m. on June 30, 2019 has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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: May 8, 2019

Residential Tenancy Branch