



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMJ LAM HOLDINGS LTD & PATHWAY COMMUNITY SERVICES LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

On February 25, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) a monetary order for unpaid rent; a monetary order for damage or repairs; and to keep the security deposit.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord applied for dispute resolution and paid the application fee on February 25, 2019.

The Landlord testified that he is not sure when the Tenant vacated the rental unit. He submitted that he performed an inspection of the rental unit on February 7, 2017. The Landlord's photographs show that the rental unit was empty at this time.

The Landlord testified that a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated November 11, 2016, was issued to the Tenant. The 2 Month Notice has an effective date of January 31, 2019.

The Tenant did not dispute the 2 Month Notice. The Tenant testified that the rental unit was vacated on January 15th or 16th.

Section 44 of the Act provides that a tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [tenant's notice];
 - (i.1) section 45.1 [tenant's notice: family violence or long-term care];
 - (ii) section 46 [landlord's notice: non-payment of rent];
 - (iii) section 47 [landlord's notice: cause];
 - (iv) section 48 [landlord's notice: end of employment];
 - (v) section 49 [landlord's notice: landlord's use of property];
 - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
 - (vii) section 50 [tenant may end tenancy early];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Section 60 (1) of the Act provides:

If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

(2) Despite the Limitation Act, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

I find that the 2 Month Notice was not disputed and therefore the tenancy would have legally ended on January 31, 2017, the effective date. However, I find that pursuant to section 44 of the Act, the tenancy ended when the Tenant vacated the rental unit on January 16, 2017.

I find that the Landlord applied for dispute resolution on February 25, 2019.

The Landlord's application was not filed within two years from the end of the tenancy. Since the tenancy ended on January 16, 2017, more than two years prior to the date the Landlord applied for dispute resolution; pursuant to section 60(2) of the Act, the Landlord's claims under the Act and tenancy agreement cease to exist.

The Landlord's application is dismissed in its entirety.

Conclusion

The Landlord's application is dismissed. The Landlord's application was not filed within two years from the end of the tenancy. Since the tenancy ended more than two years prior to the date the Landlord applied for dispute resolution; pursuant to section 60(2) of the Act, the Landlord's claims under the Act and tenancy agreement cease to exist.

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: June 13, 2019

Residential Tenancy Branch