



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FFT

Introduction

On February 4, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting the following relief:

- for more time to make an application to cancel a notice to end tenancy
- to cancel a Two Month Notice to End Tenancy for Landlord Use of Property.

The matter was set for a conference call hearing. The Tenant and Landlord appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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.

Issues to be Decided

- Does the Tenant have exceptional circumstances to warrant an extension of time to dispute a notice to end tenancy?
- Is the tenancy ending based on issuance of a Two Month Notice to End Tenancy for Landlord’s Use of Property?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on 40 years ago. The Tenant provides 12 postdated rent cheques to the Landlord every year in January. Rent in the

amount of \$1,150.00 is to be paid to the Landlord by the first day of each month. The Tenant testified that he paid the Landlords a \$250.00 security deposit when the tenancy began. The Landlord has no record of this security deposit payment.

The Landlord state that the tenancy is on a month to month basis. The Tenant believes it is a yearly agreement; however, there is no written agreement entered into each year that the tenancy is for a fixed term.

The Act defines a "fixed term tenancy" to mean a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. I find that the there is no written agreement entered into by the parties that specifies when the tenancy ends. I find that the tenancy is on a month to month basis.

The Landlord provided testimony that on November 23, 2020 he served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 23, 2020. The Two Month Notice contains the following reason for ending the tenancy:

- *All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord in writing to give this notice because the purchaser or close family member intends in good faith to occupy the rental unit.*

The Two Month Notice provides the name and address of the purchaser.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice provides that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that he received the Two Month on November 23, 2020. The Tenant had until December 8, 2020 to dispute the Two Month Notice. The Tenant applied for more time to dispute the Two Month Notice on February 4, 2021. The Tenant's application is late.

Section 49 (9) of the Act provides that if a tenant who has received a Two Month Notice does not make an application for dispute resolution within 15 days after receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The Two Month Notice has an effective date of March 31, 2021.

The Tenant applied for more time to dispute a notice to end tenancy. Section 66 (1) of the Act provides that the director may extend a time limit established by this Act only in exceptional circumstances.

Residential Tenancy Branch Policy Guideline # 36 Extending a Time Period provides information regarding an exceptional circumstance as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well*
- the party did not know the applicable law or procedure*
- the party was not paying attention to the correct procedure*
- the party changed his or her mind about filing an application for arbitration*
- the party relied on incorrect information from a friend or relative*

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times*

The Tenant was asked to explain why the Two Month Notice was disputed 58 days late. The Tenant initially testified that he did not know that he could dispute the Two Month Notice and later clarified this statement to mean that he did not think he would have any success in disputing the Notice because it was based on the sale of the rental property.

The Tenant stated that he felt overwhelmed and tried to contact the purchaser at some point to see if he would work with him. He stated that he was never able to contact the purchaser. The Tenant stated that in February 2021 he discovered that the purchaser does business buying and demolishing properties. The Tenant concluded that the purchaser does not have the intention to occupy the unit and then applied to dispute the Two Month Notice.

When the Tenant was asked to provide the date when he first attempted to contact the purchaser he could not recall, and stated it was at some point.

The Tenant stated that he realizes that he is going to have to move at some point but wants to continue the tenancy and not be out on the street.

In reply, the Landlords provided testimony that they received written notice from the purchaser to issue a Two Month Notice because he intends to occupy the rental unit. The Landlords complied with the purchasers written notice and issued the Two Month Notice to the Tenant. The Landlords provided a copy of the Buyers Notice to Seller for Vacant Possession dated November 17, 2020 and signed by the purchaser.

The Landlords testified that the sale agreement for the home has closed and the possession date is April 14, 2021.

The Landlords testified that it does appear the purchaser has sold the unit to someone else for the same possession date of April 14, 2021. The Landlords' provided a copy of a letter from an individual Mr. K.J. that indicates he intends to take occupancy of the property as soon as they get possession.

Analysis

Based on the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

Exceptional Circumstances

The Buyers Notice to Seller for Vacant Possession indicates that the buyers or in the case of a family corporation, voting shareholders of the buyers intend in good faith to occupy the property.

I find that the Tenant received the Two Month Notice on November 23, 2020 and applied to dispute the Notice 73 days later, on February 4, 2021.

The Tenant did not dispute the Two Month Notice because he did not believe he would have any success based on the sale of the rental property. I find that the Tenant was not actively trying to dispute the Two Month Notice until February 2021 when the Tenant discovered that the purchaser allegedly does business buying and demolishing properties and may not have the intention to occupy the rental unit.

I have considered whether or not the Two Month Notice should be considered invalid and does not need to be disputed. There is insufficient evidence before me to be able to determine whether or not the purchaser had a good faith intention to occupy the rental unit at the point of time when the buyers notice was served to the Landlord, or whether the purchaser simply changed his mind at some point and has sold the

property to another individual. There is no evidence before me on whether or not the alleged new owner is a family member or a voting shareholder of the family corporation. For these reasons, I am not inclined to find that the Two Month Notice was issued in bad faith and should be set it aside. I note that the Act provides for compensation to a Tenant when a rental unit is not used for the purpose stated in a Two Month Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of a notice.

I have considered the Tenant's submissions regarding the late dispute of the Two Month Notice. I find that the reasons provided by the Tenant are not exceptional. The Tenant chose to not dispute the Two Month Notice because he believed there was a sale agreement. I find that there is a sale agreement. The Tenant's belief formed two months later that the purchaser buys and demolishes properties and/ or has now resold the rental property does not establish an exceptional reason for a late dispute of the Two Month Notice.

The Tenant's application for more time to dispute a notice to end tenancy and to cancel the Two Month Notice is denied and is dismissed. I find that the Tenant is conclusively presumed to have accepted that the tenancy ends on March 31, 2021, the effective date on the Two Month Notice.

Under section 55 of the Act, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. The possession date for the sale of the property is April 14, 2021.

I find that the Two Month Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective by 1:00 pm on March 31, 2021, after service on the Tenant. I grant the Landlord an order of possession for the rental unit. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application for more time to dispute a notice to end tenancy and to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 23, 2020, is not successful and is dismissed. The tenancy is ending.

I grant the Landlord an order of possession for the rental unit effective by 1:00 pm on March 31, 2021, after service on the Tenant.

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: March 31, 2021

Residential Tenancy Branch