



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding MAXTRUM HOLDINGS INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This dispute involves the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated January 15, 2022 (1 Month Notice) and for the filing fee of \$100.

The tenant and the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The email addresses of the parties were confirmed at the outset of the hearing. The decision will be sent by email to both parties.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on April 1, 2021. Monthly rent is \$650 and is due on the first day of each month.

The tenant writes that they received the 1 Month Notice on November 17, 2022 and filed their application to dispute the 1 Month Notice on the same day. The landlord was asked why they wrote the address the landlord's lives at in the address where they want the tenant to vacate from. The landlord testified that it was an error.

The landlord then stated that the tenancy agreement allows both parties to end the tenancy with 30 days' notice, which I will address below.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice on time, which the tenant did in this matter, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

Section 52 of the Act applies and states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) **give the address of the rental unit,**
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

[emphasis added]

As the landlord admitted to making an error by requesting that the tenant vacate the rental unit of the landlord, which is not the address of the tenant, **I cancel the 1 Month**

Notice as a result. The landlord is reminded to be careful not to make errors when filling out a notice to end tenancy.

I find it is not necessary to consider any other details related to the 1 Month Notice as it does not comply with section 52 of the Act.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant a one-time rent reduction of **\$100** from a future month of rent in full satisfaction of the recovery of the filing fee pursuant to sections 62(3) and 72 of the Act. The landlord must not issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities for the month where the tenant applies their one-time rent reduction of \$100.

I will now address the landlord's statement regarding ending the tenancy with a 30-day notice. The landlord writes in their tenancy agreement the following:

~~Each party has the rights to terminate this agreement with a 30-day-notice.
If the tenant doesn't move out after the landlord sends a 30-day-notice, the tenant has to pay \$100 per day.~~

I find the landlord has breached section 5 of the Act, which applies and states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

As section 44 of the Act sets out the ways a tenancy can end, the landlord is **not entitled** to give a 30-day notice to end the tenancy, only a 1 Month Notice to End Tenancy for Cause. Therefore, I find the portion of the tenancy agreement listed above is not enforceable under the Act, which the parties were advised of during the hearing.

In addition, a \$100 fee per day is also not permitted under the Act and is not enforceable. I order the landlord not to mislead the tenant in the future.

Conclusion

The tenant's application is successful. The 1 Month Notice is cancelled as it does not comply with section 52 of the Act.

The tenancy shall continue until ended in accordance with the Act.

The tenant has been granted a one-time rent reduction of \$100 from a future months' rent in full satisfaction of the recovery of the filing fee pursuant to sections 62(3) and 72 of the Act.

The portions of the tenancy agreement identified above is not enforceable under the Act. The landlord has also been ordered not to mislead the tenant in the future.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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, 2023

Residential Tenancy Branch