Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL-4M, DRI-ARI-C, OLC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 49 cancelling a Four-Month Notice to End Tenancy for Demolition or Conversion of a rental unit signed on January 4, 2023 (the "Four-Month Notice") and an order pursuant to s. 66 for more time to do so;
- an order pursuant to s. 43 disputing an additional rent increase for a capital expenditure;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement;
- return of the filing fee pursuant to s. 72.

N.C. appeared as the Tenant. The Landlord did not attend the hearing, nor did someone attend on the Landlord's behalf.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised that he served the Notice of Dispute Resolution with his evidence, comprising of the Four-Month Notice, on the Landlord via registered mail sent on March 24, 2023. I am provided with a copy of the registered mail tracking receipt stamped March 24, 2023 as proof of service.

I find that the Tenant served his application materials in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Landlord received the Tenant's application materials on March 29, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

Issues to be Decided

1) Is the Tenant entitled to more time to dispute the Four-Month Notice? If so, should the Four-Month Notice be cancelled?
2) Is the Landlord entitled to an order of possession pursuant to the Four-Month Notice?
3) Was the rent increase imposed in accordance with the *Act*?
4) Should the Landlord be ordered to comply with the *Act*, Regulation, or the tenancy agreement?
5) Is the Tenant entitled to his filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The Tenant confirmed the following details with respect to the tenancy:

- He moved into the rental unit approximately 5 years ago.
- Rent of $1,150.00 is due on the first day of each month.
- A security deposit of $550.00 was paid to the Landlord.

Should the Tenant be Given More Time to Dispute the Four-Month Notice?

The Tenant acknowledges that he received the Four-Month Notice on January 4, 2023. Review of the information on file shows that he filed his dispute on March 14, 2023. As per s. 49(8)(b) of the *Act*, a tenant has 30 days from receipt of the notice to file an application disputing it. The Tenant explains that he was late in filing as it was only in March that he discovered from other occupants at the residential property that they had not received similar notices to end tenancy such that he questioned whether it would be demolished.

Pursuant to s. 66 of the *Act*, the director may extend a time limit established under the *Act* but only under exceptional circumstances. The extension cannot be granted if the application is made after the effective date in the notice has passed. Policy Guideline #36 provides guidance on what may constitute exceptional circumstances, setting out various criteria upon which this is assessed, including:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

I find that the Tenant has failed to establish that exceptional circumstances are present. Indeed, it appears that he wilfully ignored the deadline only taking note to dispute the notice after discovery that the other tenants did not also receiving a notice to end tenancy. There was no intent to comply with the relevant timelines and the delay is the result of the Tenant's failure to comply with the clear instructions printed at the top of the Four-Month Notice.

I dismiss the Tenant's claim for more time under s. 66 of the *Act* without leave to reapply.

Is the Landlord entitled to an Order of Possession?

Section 55(1) of the *Act* provides that where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with s. 52, then I must grant the landlord an order for possession. As per s. 49(7) of the *Act*, all notices issued under s. 49 must comply with the form and content requirements set by s. 52 of the *Act*.

The Tenant explains and I accept that he lives within a basement suite at the residential property, which is a multiunit property. Section 52(b) of the *Act* requires the rental unit address to be listed in the notice. I have reviewed the Four-Month Notice provided to me by the Tenant and it does not list the rental unit as a basement suite. Accordingly, I find that the Four-Month Notice does not list the rental unit's address such that it is an improper notice under s. 49 of the *Act* and is unenforceable.

Despite the Tenant's failure to dispute the Four-Month Notice in time, I find that the Landlord is not entitled to an order of possession under s. 55 of the *Act* as the notice fails to comply with s. 52. The Four-Month Notice is of no force or effect and the tenancy shall continue until it is ended in accordance with the *Act*.

Was the Rent Increase Properly Imposed?

The Tenant explains that the current Landlord took ownership of the property in April of 2022. At that time, the Tenant explains that he paid rent of $800.00 but that the Landlord demanded an additional $350.00 per month. The Tenant explains that signed a form to that effect agreeing to the rent increase but argued that he was unaware that he had recourse at that time. The Tenant admits he has been paying rent of $1,150.00 since agreeing to the increase.

Part 3 of the *Act* establishes the process by which rent can be increased. Relevant to these circumstances, s. 43(c) of the *Act* permits a landlord to impose an increase in an amount agreed to by the tenant in writing. In this instance, I find that the Tenant did agree to the increase in writing, acknowledging having signed a document to that effect.

The Tenant argues that he did not know he had recourse. However, there is no evidence to support that the Tenant's agreement was somehow obtained by duress or coercion. The Tenant's lack of knowledge of the proper process or procedure does not amount to duress or coercion and the Tenant was under no obligation to agree to the rent increase, yet he did and has paid the increased amount for over one year.

I find that the rent increase of $350.00 was imposed in compliance with s. 43(c) of the *Act*. The Tenant's application disputing the rent increase is dismissed without leave to reapply.

Should the Landlord be Ordered to Comply with the Act, Regulation, or Tenancy Agreement?

Review of the Notice of Dispute Resolution shows that this claim is a continuation of the other disputes filed by the Tenant. At the hearing, the Tenant confirmed that this was the case and that this was not a separate issue from those discussed above. As this is not an independent claim, I dismiss it without leave to reapply.

Conclusion

I dismiss the Tenant's claim under s. 66 of the *Act* for more time to dispute the Four-Month Notice without leave to reapply.

Despite failing to file on time, the Landlord is not entitled to an order of possession as the Four-Month Notice does not comply with s. 52 of the *Act*. The Four-Month Notice cannot be enforced and is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

I dismiss the Tenant's claim under s. 43 of the *Act* disputing a rent increase without leave to reapply.

I find that the Tenant was largely unsuccessful and did not face eviction due to a technical error in the Four-Month Notice. As such, I find he is not entitled to his filing fee. The Tenant' claim under s. 72 of the *Act* is also dismissed without leave to reapply.

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 25, 2023

Residential Tenancy Branch