



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL, MNDC, OLC, FF

Introduction

This hearing dealt with the tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use* (the Notice), a Monetary Order for damage or loss under the Act, regulation or tenancy agreement, an Order for the landlord to comply with the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to other party's submissions.

Issue(s) to be Decided

1. Whether there are grounds to cancel the Notice.
2. Whether the landlord has violated the Act, regulation or tenancy agreement and if so, the tenant's entitlement to compensation.
4. Whether the issuance of an Order to comply with the Act, regulation or tenancy agreement is warranted.
5. Award of the filing fee.

Background and Evidence

The parties were in agreement to the following relevant facts. The tenancy began in August 2003. Monthly rent was \$785.00. The landlord gave the tenant page 1 of a *2 Month Notice to End Tenancy for Landlord's Use* on May 30, 2008. The tenant vacated the rental unit August 1, 2008. On August 3, 2008 the landlord rented the unit to a new tenant. The parties agreed that the ceiling needed to be repaired in the rental unit.

The tenant testified that contractors came in to examine the rental unit and told her that she would not be able to reside in the rental unit while ceiling repairs were being made. The landlord disputed the tenant's position and insisted that it is the tenant who did not want to be in the rental unit while ceiling repairs were being made and that he found a new tenant who was willing to reside in the unit while repairs were being made. The landlord submitted that he advertised for a new tenant when the tenant advised him that she would not be returning to the rental unit on the day she was moving out.

The parties were in agreement that there had been some discussion about the tenant moving out of the rental unit temporarily while repairs were being made; however, the tenant testified that she discovered how difficult it was to find temporary accommodation and informed the landlord that she would have to find long term accommodation. The parties did not agree as to when the tenant advised the landlord that she would not be able to move out temporarily.

The landlord testified that the tenant had told him and others that it was time for her to move on. The landlord stated that he gave the 1st page of the Notice simply because the form was located on the Residential Tenancy Office website and it was entitled as a 2 Month Notice. Since that was the amount of time the tenant indicated she needed to find alternative accommodation, the landlord served her with page 1 of the 2 Month Notice. The landlord's submissions were largely based on the position that the tenant either chose to leave or that the tenancy ended by mutual agreement. The tenant testified that she would not have moved out had she not been served with the Notice. The landlord provided the tenant with a reference letter dated June 1, 2008 that clearly states the landlord required the unit to be vacant in order to make extensive renovations.

The parties agreed that the tenant was not provided with one month compensation for her last month of tenancy; however, the landlord offered to settle this matter with

payment equivalent to one month's rent. The tenant rejected the offer and made application for dispute resolution.

Analysis

As the tenancy has ended, cancellation of the Notice to End Tenancy is no longer required.

Section 44 of the Act provides for the ways a tenancy ends. Essentially, a month-to-month tenancy ends where a tenant gives written notice, a tenant abandons the unit, the landlord gives written notice or the parties mutually agree to end the tenancy in writing. All written notices to end tenancy must include certain information required by section 52 of the Act and in the case of a landlord giving notice to a tenant the notice must be in the approved form. The Notice presented as evidence is not in the approved form as it did not include the reason for ending the tenancy, as provided on the 2nd page of the approved form. Although the Notice is not in the approved form, the Notice is not indicative of a mutual agreement to end the tenancy as a mutual agreement would reflect the tenant's desire to end the tenancy and include the tenant's signature. Nor, is the Notice indicative of a tenant's notice to end the tenancy. Despite the landlord's inference that the tenancy ended by mutual agreement, or because the tenant wanted to move out, the documentation provided as evidence does not support the landlord's position. Therefore, I find that the tenancy was ended by the landlord.

A landlord may end a tenancy for specific reasons, as provided in the Act, including cause, non-payment of rent or landlord's use of the property. Where a tenant does not give a landlord cause to end the tenancy and rent has been paid, the landlord may end the tenancy for landlord's use of the property under section 49 of the Act; however, the tenant must be compensated for the tenancy ending. Section 51 of the Act provides for the amount of compensation a landlord must give to a tenant where the tenancy is ended by the landlord under section 49. A tenant who receives a Notice under section

49 must be compensated the equivalent of one month's rent under section 51(1) and if the landlord does not take steps to accomplish the purpose for ending the tenancy within a reasonable period of time, the tenant is entitled to additional compensation equivalent to two month's rent under section 51(2).

In this case, page 2 of the Notice was not served upon the tenant; therefore, it is not a Notice under section 49 of the Act. However, failing to serve the tenant with the approved form to end the tenancy is a violation of the Act, and the landlord is liable to compensate the tenant for loss or damages she incurred by the tenant as a result of the landlord's violation of the Act.

In light of the above findings, I award the tenant compensation under section 67 of the Act rather than section 51. Section 67 provides that I may award a party compensation where it is shown that the other party violated the Act and the violation caused the party to incur loss or damage. I am satisfied that the tenant incurred moving costs, utility connection costs, increased rent and a loss of time to pack and settle in to her new accommodation. I am also satisfied that the landlord effectively communicated to the tenant that the rental unit needed to be vacant in order to complete extensive renovations, as stated in the landlord's reference letter, yet the landlord immediately re-rented the unit. Therefore, I use sections 51(1) and (2) of the Act as a guideline in determining the amount I will award the tenant.

The landlord is hereby ordered to pay the tenant compensation equivalent to three month's rent which is \$2,355.00. As the tenant was successful with this application I award the filing fee to the tenant. The tenant is provided with a Monetary Order in the total amount of \$2,405.00. The tenant must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

I am satisfied the Monetary Order is the appropriate resolution to this matter as a landlord must not avoid the application of the Act by not serving all the pages provided with the approved forms. As the Monetary Order compensates the tenant for her loss, I make no other Order upon the landlord.

Conclusion

The tenant is provided with a Monetary Order in the total amount of \$2,405.00

October 16, 2008

Date of Decision