



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

The tenant attended this in-person hearing in the Burnaby Offices of the Residential Tenancy Branch (RTB). She testified that her cousin who was available at the hearing handed the landlord's resident manager (the landlord) a copy of her original dispute resolution hearing package on March 17, 2011. She also testified that she handed the landlord a copy of her amended application for dispute resolution on April 19, 2011 at 2:00 p.m. She said that she received the landlord's April 16, 2011 One Month Notice to End Tenancy for Cause (the Notice) by registered mail after she filed her original application for dispute resolution.

Although I am satisfied that the landlord was notified that this was an in-person hearing in accordance with the *Act*, the landlord's resident manager called the RTB shortly after the scheduled commencement time for the hearing. He told RTB staff that he had misread the Notice for the Dispute Resolution Hearing and thought that this was to be held as a teleconference hearing. He left a telephone number where he could be contacted.

For approximately the next 20 minutes, I enlisted TELUS operators to try to connect with the landlord's resident manager at both the telephone number he left with RTB staff and another office telephone number we had for him. TELUS reported that one of these numbers was no longer in service and the other was busy each time they attempted to connect with the resident manager.

After 20 minutes of unsuccessful efforts to connect with the landlord, I proceeded to hear the tenant's application for dispute resolution.

Preliminary Matters – Submissions of Evidence and Requests to Add Issues for Consideration in this Hearing

At the commencement of this hearing, I noted that the parties sent most of their written evidence to both the RTB and one another outside the time frame for doing so. This was of particular concern because both parties were apparently attempting to expand the issues before me at this hearing.

The tenant attempted to amend her application for dispute resolution on April 19, 2011. Her amended application added the following items to her previous application:

- an order regarding a disputed additional rent increase pursuant to section 43.
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a request for a monetary award of \$4,500.00.

The tenant asked for a rent reduction of \$800.00 for her lack of a shower and for unnecessarily disturbing her quiet enjoyment of her rental premises

At the hearing, I rejected the tenant's attempt to add new issues that appeared to extend far beyond her initial application. Her service of this document to the landlord occurred three business days before the April 27, 2011 hearing. In dismissing her request to amend her application, I find that the application and many of the issues cited by the tenant in her supporting evidence package involve totally different issues, many of which transpired after she submitted her original application for dispute resolution. Under these circumstances, I am not satisfied that the landlord received the tenant's amended application in sufficient time to prepare adequately to respond to this significantly modified application, which now included a request for a large monetary award. I limit my consideration of the tenant's application to the original issues outlined in her application, as set out at the commencement of this decision.

Although the landlord did provide some of his evidence within the time frames for doing so, the landlord's April 15, 2011 letter to the RTB attempted to "submit a cross-application against the application" to evict the tenant for the reasons cited in the landlord's evidence package. The landlord did not file an application for dispute resolution, but sought to obtain an end to this tenancy apparently on the basis of the Notice he issued to the tenant on April 16, 2011. As the landlord has not filed an application for dispute resolution, the landlord's attempt to submit a cross-application through his evidence package is not before me. Consequently, I make no ruling on the issues identified in the landlord's request.

Issues(s) to be Decided

Is the tenant entitled to an Order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement? Is the tenant entitled to recover her filing fee for this application from the landlord?

Background and Evidence

The tenant first moved into a one bedroom suite on the *th floor of this building in 2007. On August 1, 2010, the tenant moved to a larger one bedroom unit, Suite 12345. She signed a one year fixed term tenancy agreement at that time, with a maximum occupancy of two people for this tenancy. Monthly rent for her present suite is set at \$1,250.00, payable on the first of the month. There is a monthly parking charge of \$50.00. The landlord continues to hold the tenant's \$625.00 security deposit paid on July 2, 2010.

The tenant's application for dispute resolution reads as follows;

My mother who is recovering from a stroke has been in my care and living with me since June 2010 from S. In August 2010 I moved to a larger unit in my building and signed a new lease with T (landlord). Landlord believes I am in breach of my contract to the point of asking for her to complete and apply to T(landlord) for a new tenancy application.

The tenant testified that she moved to the larger one bedroom unit in August 2010 to accommodate her and her mother who has been living with her since she suffered a stroke over a year ago. The tenant said that the landlord asked her if she wanted to move to a larger rental unit to accommodate the tenant's increased need for space since her mother was living with her. She said that she accepted the larger one bedroom unit when no two bedroom rental units were available in this building. She said that she is on a waiting list for a two bedroom rental unit in this building.

At the time the tenant submitted her application she had not yet received the landlord's Notice. At that time, she was seeking an Order from the RTB that would enable her mother to remain in her rental unit without having to complete a new tenancy application and without any further problems presented by the landlord.

Analysis

Since the tenant submitted her application, the landlord has issued a Notice seeking an end to this tenancy on three grounds. In one of these grounds, the landlord alleged that the tenant is responsible for a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The tenant confirmed that the alleged term breached involves the same issue that is the subject

matter of the tenant's original application, her mother's continuing residency at her rental unit.

At the hearing, the tenant testified that she delayed submitting a new application for dispute resolution regarding the landlord's Notice because she was uncertain if it were necessary to do so given her current application for dispute resolution. Since she would need to apply to the RTB for cancellation of the landlord's Notice if she does not wish to end her tenancy, she testified that she plans to file a new application for dispute resolution within the time frame identified in the Notice. She also said that she would add new issues that have emerged since she filed her original application for dispute resolution, many of which were noted in her attempt to amend her original application.

I find that the outcome that the tenant was seeking through her original application became moot when the landlord issued the Notice to end her tenancy for cause. Unless the tenant successfully disputes that Notice, any Order I might issue regarding the differences between the tenant and the landlord that existed prior to the landlord's issuance of the Notice would have little if any effect on her tenancy. Since the tenant intended to file a new application for dispute resolution that includes all of her concerns about this tenancy and the landlord's attempt to end this tenancy, I find that the circumstances as they existed at the time of the tenant's original application have changed to an extent that there would be no purpose served by making a finding on the tenant's original application for an Order against the landlord. Whether or not the landlord has complied with the *Act* and whether or not the tenant has breached a material term of her tenancy agreement would be best considered in the context of one hearing that includes all issues that the tenant has with her landlord.

Under these circumstances, I dismiss the tenant's application with leave to reapply. I make no order regarding recovery of the tenant's filing fee for this application.

Conclusion

I dismiss the tenant's application with leave to reapply. I make no order regarding the tenant's filing fee. 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*.