

## **Decision**

**Dispute Codes:** MT, CNL, MNDC

### **Introduction**

This hearing was convened in response to an application by the tenant for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for landlord's use of property / and a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. The tenant attended the hearing and gave affirmed testimony.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing (the "hearing package") the landlord did not appear. Evidence submitted by the tenant includes the Canada Post tracking numbers for the registered mailing. Further, the Canada Post website informs that a notice card was left with the landlord, "indicating where item can be picked up." Pursuant to section 90 of the Act which speaks to **When documents are considered to have been received**, I find that the tenant's hearing package is deemed to be received by the landlord.

### **Issues to be decided**

- Whether the tenant is entitled to any or all of the above under the Act, Regulation or tenancy agreement

### **Background and Evidence**

The tenant's recollection is that tenancy began in approximately May 2010. Monthly rent of \$800.00 is payable in advance on the first day of each month. A security deposit of \$400.00 and a pet damage deposit of \$125.00 were both collected near the start of tenancy, and paid to the original landlord / owner.

Sometime in early May 2011 the tenant became aware that the property had been sold and that, accordingly, there is now a new landlord. The tenant testified that a realtor for one of the parties personally served her with a 2 month notice to end tenancy for landlord's use of property dated May 7, 2011. The tenant cannot recall exactly when the notice was served on her. A copy of the notice was submitted into evidence. The date shown on the notice by when the tenant must vacate the unit is July 31, 2011. The reason shown on the notice for its issuance is as follows:

The rental unit will be occupied by the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Subsequently, the tenant filed an application to dispute the notice on July 28, 2011. As for reasons why her application was likely submitted outside the 15 day period available for disputing the notice after it is assumed to have been received, the tenant described her need to be with her daughter in hospital. Further to that, however, the tenant provided no conclusive evidence to show that the landlord's reasons as shown on the notice for ending tenancy are not *bona fide*.

The tenant referred to conversations with the new landlord, the landlord's son, and representatives of an eviction service. In summary, while the nature of any agreement that may have been reached between the parties is not clear, it appears that the landlord is prepared to permit the tenant some time beyond July 31, 2011 in order to find new accommodation and vacate the subject unit. While there is no application before me from the landlord seeking an order of possession, and the landlord was not present at this current hearing to orally request an order of possession, the tenant stated that her intention is to vacate the unit by September 30, 2011.

In the meantime, the tenant testified that the landlord has not provided either heat or hot water to the unit since early May 2011. The tenant also expressed concern that the landlord may not be planning to return her security deposit and pet damage deposit at the end of tenancy, and that the landlord has accessed the unit without proper notice.

### **Analysis**

Section 49 of the Act addresses **Landlord's notice: landlord's use of property**. Further, section 51 of the Act addresses **Tenant's compensation: section 49 notice**, and provides in part as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In view of the tenant's stated intention to vacate the unit by September 30, 2011, in the absence of an application or request by the landlord for an order of possession, and in the absence of any evidence that the landlord has not agreed to a continuation of tenancy to September 30, 2011, I find, pursuant to the above legislation, that the tenant may withhold payment of rent for the month of September 2011.

The attention of the parties is also drawn to section 51(2) of the Act which provides:

51(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The attention of the parties is also drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

For the information of the parties, section 29 of the Act addresses **Landlord's right to enter rental unit restricted**, in part as follows:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Arising from the affirmed / undisputed testimony of the tenant, I hereby **ORDER** the landlord as follows:

- 1. Provide heating to the unit effective immediately.**
- 2. Provide hot water to the unit effective immediately.**
- 3. Provide proper notice to the tenant in the event of entry to the unit.**

Should the landlord not comply with the above orders, and/or the parties do not negotiate a settlement between them in regard to the provision of heat and hot water, the tenant has the option of filing a further application for dispute resolution.

### **Conclusion**

The tenant may withhold payment of rent for September 2011.

The landlord is hereby ORDERED to comply with the above 3 ORDERS.

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*.

DATE: August 29, 2011

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Residential Tenancy Branch