



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF. O

Introduction

This hearing was convened by way of conference call in repose to the tenants application for to cancel the Two Month Notice to End Tenancy; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the Two Month Notice to End tenancy cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act?

Background and Evidence

Both parties agree that this month to month tenancy started approximately five years ago. Rent for this unit is \$910.00 per month and is due on the first day of each month in advance.

The landlord's agent testifies that the tenant was served with a Two Month Notice to End Tenancy for the landlord's use of the Property. The landlord's agent testifies that the current owner of the property has applied to the City for permits to demolish the building. The landlords agent testifies that she did explain to the new landlord that he must have all necessary permits in place before issuing the tenants living in the building with a Two Month Notice. The landlord agent testifies the landlord did obtain a development permit and was told the demolition permits would take another three weeks. The landlord agent states as the required permits are not yet in place the landlord withdraws the Two Month Notice to End Tenancy.

The tenant testifies that this is the third Two Month Notice the tenant has received. The tenant testifies that the other two Notices were issued by the previous landlord. The tenant testifies that this landlord was aware he did not have the necessary permits in place before he issued the tenant with another Two Month Notice. The tenant testifies that the landlord therefore did not act in good faith in issuing this third Notice.

The tenant testifies that as the onus is on the tenant to dispute each Notice that is served this involves a lot of time and effort on the tenant's part to disprove the reason given on the Notice in Order to have the Notice cancelled. The tenant feels he has been subjected to a form of harassment and feels he has lost his quiet enjoyment of his rental unit due to the three Notices to end his tenancy.

The tenant testifies that he has had to attend three hearings due to these Notices having been issued in bad faith and due to this the tenant has lost time at work and spent approximately 23 hours in having to deal with documentation to prepare his applications and to attend the hearings. The tenant testifies that he has also suffered from the stress of being faced with eviction.

The tenant seeks to recover the costs of three registered mailings to send three applications and associated documents to the landlords; the tenant seeks to recover the sum of \$3,450.00 for his time and has calculated this at 150.00 per hour for 23 hours. The tenant states he is a professional person who earns \$150.00 per hour; the tenant seeks to recover

sums for using his own office supplies to prepare documentation for the hearings, and time away from work to attend to documentation, meet service deadlines and attend hearings. The total amount claimed by the tenant in money owed and compensation is \$4,999.99.

The landlord disputes that the tenant is entitled to money owed or compensation. The landlord's agent testifies that the first two Notices were served by the previous landlord; the first Notice was withdrawn as the landlord's agent had made an error and the second Notice was not issued in bad faith. The landlord's agent testifies the third Notice was issued after the new landlord thought he had everything in place but now that he understands he does not, then he is willing to withdraw the Notice and should not be penalised for doing so.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants application to cancel the Two Month Notice to End Tenancy; the landlord's agent has withdrawn this Notice at the hearing consequently this Notice has no force or effect and is cancelled.

With regard to the tenants claim for money owed or compensation for damage or loss; The Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the *Act*. In this matter a landlord is entitled to serve a tenant with a Notice to End Tenancy and in doing so this does not constitute a breach of the covenant of quiet enjoyment of the premises under s. 28 of the *Act*. When a Notice of this nature is given a tenant's recourse would be to dispute each Notice. As the tenant has disputed each of the Notices and it has been found in this case that the landlord issued the Notice without having the required permits in place it does not mean that the landlord has breached the *Act*. While I accept that the tenant has suffered some distress and inconvenience as a result of these Notices the landlord is still within his rights to issue the Notices.

Consequently, I find there is no provision under the *Act* for me to award costs of this nature to the tenant and therefore I have no authority to award the tenants costs as claimed and the tenant's application for money owed or compensation for damage or loss is dismissed.

Conclusion

The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice to End Tenancy dated January 25, 2012 is cancelled and the tenancy will continue. As the tenant has been successful in this matter, the tenant is entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from the tenants next rent payment when it is due and payable to the landlord.

The reminder of the tenant's application is 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: February 23, 2012.

Residential Tenancy Branch