



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes

CNC, MNDC

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* for Orders as follows:

Tenant:

Cancel a Notice to End Tenancy for Cause - Section 47; based on a letter to the tenant dated April 06, 2012 informing the tenant to vacate for unstated reasons for any cause in the letter. And,

For a Monetary Order for damage and loss in the amount of \$700.00.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by personal service on April 17, 2012 in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing.

The tenant was given full opportunity to be heard, to present evidence and to make submissions.

For this type of application, the onus is on the landlord to prove they issued a valid Notice to End and that it was issued for valid and sufficient reasons.

Issue(s) to be decided

Has the landlord served the tenant with a valid Notice to End to end the tenancy, as required by the Act?

Is the tenant entitled to the monetary amount claimed?

Background and evidence

The relevant evidence in this matter is as follows.

On April 06, 2012 the landlord gave the tenant a *letter* informing the tenant that their tenancy was ending May 15. The tenant testified that the landlord has not given the tenant a 1 Month Notice to End Tenancy for Cause.

The tenant also testified that the landlord pressure washed the back wooden stairs and sundeck purportedly causing water to run into the tenant's storage area and causing some damage to their stored belongings. The tenant claims they took photographs of the alleged damage and had the damage viewed and that an individual provided a written estimate of the damage and loss in the amount of approximately \$1400.00. The tenant claims they gave the landlord all their evidence on May 01, 2012, and subsequently provided the Branch with the same evidence. The Branch is not in receipt of the tenant's entire evidence (photographs), and their monetary claim exceeds the amount on their application without benefit of an amendment to the application duly served on the landlord at least 5 days before the hearing in accordance with the Hearing Rules and Procedures.

Analysis

Section 44 of the Act, in part, states as follows:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

Section 52 of the Act states as follows: **(emphasis for ease)**

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.**

In this matter, I find that the landlord did not give the tenant a valid or legal Notice to End in concert with the requirements of Section 52 of the Act. As a result, the landlord's letter dated April 06, 2012 is not effective to end this tenancy, and is null and of no effect. The tenant's application **is granted**. The landlord's notice to end **is cancelled**.

I find that the tenant did not provide the landlord with an application reflecting the full extent of their monetary claim. The tenant also did not provide the Branch with all the evidence they purport to have served the landlord and upon which they intend to rely on to advance their claim - within the required time to do so. The tenant also did not provide the Branch with evidence they served the landlord with all the evidence they intend to rely on to advance their claim - within the required time to do so. As a result, I dismiss the tenant's claim for a monetary order. However, as the landlord did not attend the hearing to dispute the tenant's claims or their evidence, **I dismiss** the tenant's claim with leave to reapply.

Conclusion

The tenant's application to set aside the landlord's Notice to End is granted, and the tenancy continues.

The landlord remains at liberty to give the tenant a *valid* Notice to End, for *sufficient and valid reasons*.

The tenant's claim for a monetary order is dismissed with 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 07, 2012

Residential Tenancy Branch