



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes CNL, MNDC, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by one of the tenants and the landlord.

Prior to the hearing the tenant submitted a written request for an adjournment as he has recently been ill and has not had an opportunity to prepare his evidence for submission. The tenant testified that the evidence is relevant to both the notice to end tenancy and to his monetary claim. The tenant has submitted medical documentation confirming his medical condition and limitations.

The tenant further testified the evidence will show that as a result of actions by the landlord, over the course of the tenancy, the landlord has not issued the notice to end tenancy in good faith. The tenant also testified that the monetary claim is one that he and his wife had considered but had been holding off on because they feared it would jeopardize their tenancy.

The landlord objected to an adjournment on the grounds the tenant made his request too late in the process and that should the tenants be successful in their Application the landlord, who has rented her current home to another tenant effective September 1, 2012, may have to find her own accommodation within a short time frame if the hearing is held later.

Residential Tenancy Branch Rule of Procedure 6.4 sets out the criteria I must consider for granting an adjournment as follows:

1. The oral and written submissions of the parties;
2. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
3. Whether the adjournment is required to provide a fair opportunity for a party to be heard;
4. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking adjournment; and
5. The possible prejudice to each party.

From the submissions before me, I accept the tenant has been unable to prepare for the hearing for reasons beyond his control and an adjournment will allow for him to prepare his evidence which will help contribute to the resolution of the matters. Again, I accept based on the tenants inability to prepare for medical reasons the adjournment will allow a fair opportunity for the tenants to prepare their case. I find, based on the evidence before me, that the need for the adjournment is not the result of intentional actions or neglect on the tenants part.

While the landlord raises concern that a successful Application for the tenant may result in her need to find alternate accommodation, I must balance this against the tenants' right to a fair opportunity to be heard in the matters before me. The authority delegated to me is to ensure appropriate interpretation of the rights and obligations of the parties in the tenancy that is before me.

As such, in relation to the portion of this Application dealing with the notice to end tenancy, I find the tenant's right to have a fair opportunity to be heard in this matter does not prejudice the landlord's rights under this tenancy agreement.

However, in relation to the tenants' Application for Dispute Resolution for a monetary claim of \$11,080.00, I note the tenants have not provided any explanation of what the claim is for and in the details of dispute section "Requesting cancellation of 2 month notice to end tenancy." The tenants have provided no other indication of what they were seeking compensation for in relation to the \$11,080.00 noted on the Application.

In accordance with Rule of Procedure 2.3 and in the absence of any evidence from the tenants as to how the two matters raised in the Application for Dispute Resolution are sufficiently related or that the outcome of the monetary claim and the cancellation of the notice to end tenancy are linked, I sever the tenants' Application.

Section 59 of the *Residential Tenancy Act (Act)* requires a party who makes an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the proceeding. From above, I find the tenants have failed to provide any particulars regarding the monetary claim

As the tenants have failed to provide details as to why they are seeking the monetary claim they have outlined in their Application as is required under Section 59, I dismiss this portion of the tenants' with leave to reapply.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to a monetary order for compensation for damages or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

Conclusion

Based on the above, I adjourn this hearing regarding the portion of the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy to August 8, 2012 at 11:00 a.m.

I order the tenants must serve the landlord with the evidence they intend to rely upon in accordance with the service provisions under Section 89 of the *Act* and that regardless of the method of service the landlord and Residential Tenancy Branch receives the tenants' evidence no later than July 31, 2012.

I order the landlord must serve the tenant with the evidence she intend to rely upon in accordance with the service provisions under Section 89 of the *Act* and that regardless of the method of service the landlord and Residential Tenancy Branch receives the landlord's evidence no later than August 7, 2012.

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: July 24, 2012.

Residential Tenancy Branch