



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a one month notice for cause issued on July 10, 2012, to seek compensation for damages or loss under the Act, and to recover the cost of filing the application from the landlord.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 20, 2012, a Canada post tracking number was provided as evidence of service, the landlord did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. On August 9, 2012, the landlord filed evidence for today's hearing. I find that the landlord has been duly served in accordance with the Act.

The tenant confirmed receipt of the landlord's evidence submitted on August 9, 2012.

Preliminary Issue

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice. As the landlord has not appeared to provide their evidence, I find the landlord has failed to prove a cause sufficient to terminate the tenancy. As a result the tenant's application to cancel the notice issued on July 10, 2012, is granted and the tenancy will continue until legally ended in accordance with the Act.

The tenant is seeking compensation for damages due to bed bugs. The tenant has withdrawn his claim and is at liberty to reapply for this issue.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for damage or loss under the Act?
Is the tenant entitled to recover the cost of filing their application from the landlord?

Background and Evidence

The tenancy began on June 1, 2010. Rent in the amount of \$1,095.00 was payable on the first of each month. A security deposit of \$547.50 was paid by the tenant.

The tenant is claiming compensation due to a restoration projected that commenced in September 2011. The tenant stated he was compensated for the year 2011. The tenant seeks further compensation from February 2012, to August 2012.

The tenant acknowledges signing a release on March 8, 2012. The release provided the tenant with 2 months of free rent and no rent increase for 2012. Filed in evidence is a copy of the release.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenant is seeking addition compensation for damages which relate to the restoration program of the property which began on September 2011, however, the tenant signed a released on March 8, 2012, which provided the tenant with compensation.

The release states "I hereby release and forever discharge the landlord and its respective partners, affiliates, subsidiaries, employees, servants, agents, predecessors, successors and assigns, and each of them, of and from all manner of actions, causes of action, claims, disputes, demands, damages, interest, costs, expenses and compensation whatsoever, whether known or unknown which I ever had, now have or will have relating in any way whatsoever to the exterior repair and restoration program of the property, which program commenced in September 2011"

[Reproduced as written.]

I find that the tenant has been compensated for those damages and has extinguished any rights to claim for further damages as specified in the release. The tenant's application is dismissed without leave to reapply.

As the tenant has been partially successful with their application, the tenant is entitled to recover the cost of \$50.00 for the filing fee from the landlord. The tenant is granted permission to deduct \$50.00 from a future month rent payable.

Conclusion

The tenant's application to cancel the one month notice to end tenancy for cause issued on July 10, 2012, is granted. The tenancy will continue until legally ended in accordance with the Act. The tenant is entitled to deduct \$50.00 from a future rent payable to recover the cost of filing their application.

The tenant is at liberty to reapply for compensation relating to bed bugs.

The tenant's application for further compensation relating to the 2011, restoration program of the property 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: August 14, 2012.
