

## **DECISION**

### **Dispute Codes:**

MT; CNC; MNDC; AAT; FF

### **Introduction**

This Hearing dealt with the Tenant's application to be allowed more time to file an application to cancel a *One Month Notice to End Tenancy for Cause* (the Notice) issued November 30, 2012; to cancel the Notice; for compensation for damage or loss under the Act, regulation or tenancy agreement; for an Order that the Landlord provide the Tenant and his guests access to the rental unit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony.

### **Preliminary Matters**

#### **Jurisdiction**

At the onset of the Hearing on December 20, 2012, the Landlord's agent submitted that the Residential Tenancy Act did not apply because the Tenant was staying at the hotel under the Hotel Keepers Act. The Landlord's agent stated that the Tenant signed a contract with the Landlord, but that there is no tenancy agreement. He stated that no security deposit was required. The Landlord's agent was not certain if the Tenant pays rent on the first of every month or the end of every month. The Landlord's agent stated that normally there is a \$40.00 key deposit, but he was not sure if the Tenant paid it.

The Tenant stated that he signed a tenancy agreement with the Landlord in 2008.

Neither party had provided a copy of the Notice or any agreement or contract that was signed. I adjourned the matter to December 28, 2012, for both parties to provide the Residential Tenancy Branch and each other with a copy of the agreement or contract and a copy of the Notice. The parties were both given the sign in information during the Hearing and told that the Residential Tenancy Branch would send them both a Notice of Adjourned Hearing for December 28, 2012.

On December 28, 2012, the Tenant and his advocate signed into the Hearing. The Landlord did not sign into the teleconference and the Hearing continued in his absence.

Both parties provided evidence to the Residential Tenancy Branch, but the Tenant testified that he did not serve the Landlord with copies of his documentary evidence. He stated that the Landlord did not serve him with the Landlord's documentary evidence either. Therefore, I did not consider either parties' documentary evidence, but invited the Tenant to provide me with affirmed testimony regarding his position that the Residential Tenancy Act applies.

The Tenant submitted that the Ministry pays the Landlord rent directly and has done so since June or July of 2008.

**I find that this matter falls within the jurisdiction of the Residential Tenancy Act** for the following reasons:

1. The Tenant has lived at the hotel for 4 ½ years. It is his home and not temporary accommodation.
2. The Ministry forwards rent to the Landlord directly and would not do so if the Landlord had not provided the Ministry with documentation with respect to a tenancy and the amount of rent required per month.
3. The Landlord gave the Tenant a notice to end the tenancy in the form approved by the Residential Tenancy Act, for reasons provided in Section 47 of the Act.

#### The Tenant's application for an extension of time to file his Application for Dispute Resolution

The Tenant stated that he was late filing his application because he has a debilitating medical condition. He stated that he is under doctor's care and that he was ill during the 10 day period he was allowed to file his Application. The Tenant testified that the Landlord served him with the Notice on December 1, 2012. The Tenant filed his Application on December 13, 2012.

I accept the Tenant's undisputed testimony that he was not able to file his Application on time due to medical circumstances which were beyond his control. Therefore, I allowed his application for an extension to file his Application pursuant to the provisions of Section 66(1) of the Act.

#### **Issues to be Decided**

- Should the Notice be cancelled?
- Is the Tenant entitled to compensation in the amount of \$500.00?
- Should the Landlord be ordered to provide the Tenant and his guests with access to the rental unit?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

## **Background and Evidence**

The Tenant stated that he has not done any of the things that the Landlord alleges on the Notice.

The Tenant did not provide a detailed calculation for the compensation sought, nor did he provide an explanation with respect to whether he was claiming compensation under the Act, regulation or tenancy agreement.

The Tenant stated that the Landlord has not denied him or his guests access to the rental unit.

## **Analysis**

The Tenant denies all of the reasons the Landlord provided on the Notice for ending the tenancy. The Landlord did not provide any evidence to support the reasons to end the tenancy. Therefore, I grant the Tenant's application to cancel the Notice to End Tenancy. **The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.**

The remainder of the Tenant's application is dismissed. I find that the Tenant did not provide sufficient evidence to support a claim for compensation. The Landlord has not denied access to the rental unit. The Tenant did not pay a filing fee.

## **Conclusion**

**I find that the Residential Tenancy Act applies to this tenancy.**

**The Notice to End Tenancy issued November 30, 2012, is cancelled.** The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant's applications for: monetary compensation; for an Order that the Landlord provide access to the rental unit; and to recover the cost of the filing fee for the Landlord are **dismissed**.

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: December 28, 2012.

---

Residential Tenancy Branch