



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNC, CNL, RR, MNDC, FF
For the landlord: OPL, OPC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for an order cancelling a 1 Month Notice to End Tenancy for Cause and 2 Month Notice to End Tenancy for Landlord's Use of the Property, for an order allowing a reduction in rent, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord applied for order of possession for the rental unit due to alleged cause and for landlord's use of the property, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are referred to in this decision.

As a preliminary issue, I have determined that the portion of the tenants' application dealing with a request for an order allowing a reduction in rent and a monetary order are unrelated to the primary issue of disputing the 2 Notices to End the Tenancy served by the landlord. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenants' Application and dismissed that portion of the tenants' request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel the 2 Notices to End Tenancy, one for landlord's use of the property and the other for alleged cause, and for recovery of the filing fee, and the landlord's application for an order of possession for the rental unit and for recovery of the filing fee.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 Notices to end the tenancy and to recover the filing fee?

Is the landlord entitled to an order of possession for the rental unit and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on December 15, 2010, current monthly rent is \$2190.00 and the tenants paid a security deposit of \$1050.00 on or about November 25, 2010.

The evidence shows that the landlord issued to the tenants a 2 Month Notice to End Tenancy for Landlord's Use of the Property on November 30, 2012, listing an effective move-out date of January 31, 2013. The tenants filed an application for dispute resolution, seeking cancellation of that Notice.

Subsequently, the landlord issued to the tenants a 1 Month Notice to End Tenancy for Cause on December 27, 2012, listing an effective move-out date of January 31, 2013. The tenants then amended their original application for dispute resolution, seeking cancellation of that Notice, along with an order reducing the rent and a monetary order.

The tenants testified that they are vacating the rental unit effective January 31, 2013, pursuant to the effective date of the Notices, have primarily moved out of the rental unit as of the date of the hearing, and have received compensation equal to one month's rent for having received the 2 Month Notice to End Tenancy for Landlord's Use of the Property by not paying their rent for January 2013.

The landlord presented that she accepted that the end of the tenancy will be January 31, 2013, pursuant to the Notices to end the tenancy issued by the landlord.

The landlord also did not dispute that the tenants' compensation equal to one month's rent for having received a 2 Month Notice to End Tenancy for Landlord's Use of the Property would be the non-payment of rent for January 2013.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Tenants' application-

As the tenants have accepted the effective move-out date listed on the landlord's 2 Notices to end the tenancy and have vacated or are vacating the rental unit by January 31, 2013, I find the tenants are no longer in need of proceeding on their application seeking cancellation of the Notices.

I therefore under authority of section 64(3)(c) of the Act amend the tenants' application excluding such requests to cancel the Notices.

I make no findings on the tenants' application seeking cancellation of the 2 Notices.

The remaining issue on the tenants' application is recovery of the filing fee, which will be addressed later in this Decision.

Landlord's application-

As the tenants have accepted the effective move-out date listed on the landlord's 2 Notices to end the tenancy and have vacated or are vacating the rental unit by January 31, 2013, and the landlord has accepted that the end of the tenancy is January 31, 2013, I find the landlord is no longer in need of proceeding on her application for an order of possession for the rental unit.

I therefore under authority of section 64(3)(c) of the Act amend the landlord's application excluding her request for an order of possession for the rental unit based upon the 2 Notices.

I likewise make no finding on the merits of landlord's application or the validity of the Notices.

The remaining issue on the landlord's application is recovery of the filing fee, which will be addressed later in this Decision.

I also find that the parties have agreed that the tenants' compensation for having received a 2 Month Notice to End Tenancy for Landlord's Use of the Property is the payment of rent for January 2013, which the tenants retained.

Filing fee-

As I have amended both parties' applications for dispute resolution making exclusions as noted above, I decline to award either party recovery of the filing fee.

Conclusion

Due to the above, I have severed that portion of the tenants' application seeking a monetary order and a rent reduction, with leave to reapply.

Due to the above, I have amended the tenants' application seeking cancellation of the 2 Notices, excluding such request, and dismissed the remaining issue, recovery of the filing fee.

Due to the above, I have amended the landlord's application seeking an order of possession for the rental unit, excluding such request, and dismissed the remaining issue, recovery of the filing fee.

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* and is being mailed to both the applicant and the respondent.

Dated: January 17, 2013

