



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, PSF, FF, O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

The tenant/applicant confirmed that the landlord/respondent handed her a 2 Month Notice on December 30, 2012, requiring her to end this tenancy before March 1, 2013. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on January 12, 2013. I am satisfied that the above documents were served to one another in accordance with the *Act*.

The parties also confirmed that the landlord has handed the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on an approved Residential Tenancy Branch (RTB) form on January 28, 2013. At the time of the hearing, the tenant had not yet applied to cancel the 1 Month Notice, although she advised that she may very well do so as she was still within the time frame for applying to cancel that Notice.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? Is the tenant entitled to any monetary award? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

The landlord/respondent rents this two-unit rental property from an absentee landlord on the basis of a one-year fixed term tenancy agreement that commenced on March 1, 2012. The respondent lives upstairs and rented the lower level of the property to the tenant/applicant on the basis of a written periodic tenancy agreement that commenced on April 1, 2012. The applicant's monthly rent was originally set at \$1,000.00, payable in advance on the first of each month. In response to the applicant's concerns about the facilities and services provided by the respondent, the parties agreed to reduce the monthly rent for the lower rental unit to \$900.00 as of November 1, 2012. The respondent continues to hold the applicant's \$300.00 security deposit paid on May 1, 2012.

The respondent entered undisputed oral and written evidence that the agent of the owner of the property has decided to end her tenancy agreement by March 1, 2013. The owner apparently intends to demolish the building. The respondent is planning to vacate the rental property by March 1, 2013. The parties agreed that the only notice to end tenancy issued to the applicant on official RTB forms is the 1 Month Notice issued by the respondent on January 28, 2013.

As indicated to the parties at the hearing, the 1 Month Notice is not before me as the applicant submitted her application for dispute resolution to cancel the 2 Month Notice on January 11, 2013. Neither party provided me with a copy of the 1 Month Notice and the tenant still had time to apply to cancel the 1 Month Notice.

The application for a monetary award of \$900.00 was submitted in case I found that the landlord had issued a valid 2 Month Notice. The applicant wishes to remain in this tenancy.

Analysis

Section 52(e) of the *Act* requires that a landlord's notice to end a tenancy must be given in the approved RTB form. As there is agreement between the parties that no 2 Month Notice has been issued to the applicant on an RTB approved form, I find that the 2 Month Notice issued to the applicant/tenant is of no legal effect. I dismiss the 2 Month Notice with the effect that this tenancy continues.

Since no valid 2 Month Notice has been issued to the applicant/tenant, I find that the monetary requirements of section 51 of the *Act* does not apply. As such, I dismiss the application for a monetary award on the basis of the invalid 2 Month Notice without leave to reapply.

As monthly rent has already been reduced once in this tenancy and the tenant has not established sufficient entitlement to a further reduction in monthly rent, I dismiss the tenant's application for the issuance of orders against the respondent/landlord.

The applicant has been successful in achieving a cancellation of the 2 Month Notice. Although the 2 Month Notice given to the tenant has no legal effect, I find that the tenant should not be held responsible for having to obtain a finding in this regard. Under these circumstances, I find that the applicant is entitled to recover her \$50.00 filing fee from the respondent.

Conclusion

I cancel the 2 Month Notice issued to the applicant with the effect that this tenancy continues.

I issue a monetary Order in the applicant's favour in the amount of \$50.00 for the recovery of the application fee from the respondent. The applicant is provided with these Orders in the above terms and the respondent must be served with an **Original Order** as soon as possible. Should the respondent fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: February 05, 2013

Residential Tenancy Branch

