



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Del Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL, MNDC, OLC, ERP, LRE, RR

Introduction

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

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- a monetary order for \$8,033.58 in 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 make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Preliminary Matters

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 confirmed that on June 16, 2013, she received the landlord's 2 Month Notice that the landlord posted on her door on June 11, 2013. The landlord's agent (the agent) confirmed that the landlord received a copy of the tenant's dispute resolution hearing package sent to the landlord by registered mail on August 22, 2013. I am satisfied that the parties served the above documents to one another in accordance with the *Act*.

The tenant confirmed that she received a copy of the landlord's written evidence package within the time frames set out in the *Act*. The tenant entered a lengthy late written evidence submission to the Residential Tenancy Branch (the RTB). The parties

agreed that the tenant delivered a copy of her extensive evidence package to the landlord's manager on Saturday, September 28, 2013. The agent said that he only received this package two days before this hearing and had not had a full opportunity to review and consider its contents.

The tenant testified that her circumstances have changed considerably since she applied for dispute resolution. She said that she vacated the rental unit by September 1, 2013, to comply with the effective date identified in the landlord's 2 Month Notice. Since the parties agreed that the tenant has yielded vacant possession of the rental unit to the landlord, the tenant withdrew her application for each of the items noted in her application for dispute resolution with the exception of her application for a monetary award of \$8,033.58 for losses and damages arising out of this tenancy.

The tenant's applications for the following outcomes are withdrawn without leave to reapply:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

At the commencement of the hearing, the Project Manager for the renovations and repairs to this rental property, called in to the teleconference hearing to provide evidence on the landlord's behalf in response to the tenant's application. I advised that I would have him connected with the teleconference as a witness if this became necessary and he disconnected from the hearing. I note this because the range of remedies identified in the tenant's original application apparently compelled the landlord to request that the Project Manager participate in this hearing. The tenant's withdrawal of many portions of her original application enables the landlord to more accurately respond to the tenant's claim for a monetary award against the landlord.

At the commencement of the hearing, the tenant requested an adjournment of the hearing to enable what she described as “the Student Law Society” to complete its review of the circumstances surrounding her tenancy. She stated that there have been additional developments as allegedly she has lost personal property and has had her personal security impacted by the landlord’s actions.

The landlord’s agent did not agree to the tenant’s request for an adjournment. He asserted that the tenant’s late evidence should not be considered and that much of the tenant’s current claim related directly to previous decisions issued by other Arbitrators during the course of her tenancy. Although the landlord’s written evidence alluded to these previous decisions and the parties agreed that the tenant was awarded a sizeable monetary award in at least one of these previous hearings, the landlord did not include copies of those decisions or File Numbers in the landlord’s written evidence. The tenant testified that she had included references to the previous decisions in her late written evidence.

As the tenancy has ended, I advised the parties that it did seem possible that the tenant’s current application could be adjourned without prejudicing the rights of the landlord. However, I noted that if I agreed to the tenant’s adjournment request and thus afforded the landlord an adequate opportunity to consider and reflect upon the tenant’s late written evidence that I felt compelled to allow the landlord to submit written evidence in response to the tenant’s lengthy written evidence package.

The tenant was in the midst of clarifying portions of her claim with representatives of the Student Law Society and had new issues that have arisen that impact her claim since her current application was submitted. She apologized for the late provision of evidence as she said that some of these documents could not be located until she readied to vacate the rental unit.

After considering her options, the tenant decided that the best course was to withdraw her current application for a monetary award, provided she was given an opportunity to submit a new application within the time frames allowed under the *Act*. This will enable her to present all of her claim, including any request for monetary issues that ensued from her ending of this tenancy, with the assistance of representatives of the Student Law Society. As requested, the tenant’s application for a monetary award for damages and losses arising out of this tenancy is withdrawn. The tenant is at liberty to reapply for a monetary award once she has completed her consultations and has a single claim to have considered by an Arbitrator appointed under the *Act*. As any claim she might make would be a new application and I have not made a finding on the substance of any of the evidence either party submitted, I am not seized of this matter.

Conclusion

The tenant's application for the following outcomes are withdrawn without leave to reapply:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The tenant's application for a monetary award for losses and damages arising out of this tenancy is withdrawn with 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: October 02, 2013

Residential Tenancy Branch

