



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, CNL, PSF, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"), for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to make repairs to the rental unit, an order requiring the landlord to provide services or facilities required by law, and for recovery of the filing fee.

Both parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the landlord stated that she had not received the photographic evidence supplied by the tenant and the tenant agreed that she had not sent this evidence due to a misunderstanding.

It was not necessary for me to exclude this evidence as the evidence was ultimately not related to the tenant's claim.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The tenancy ended prior to the tenant's application for dispute resolution being filed. I therefore have excluded and not considered the tenant's request to cancel a landlord's Notice, or for orders for the landlord, including making repairs, to

provide for services required by law, and to allow the tenant access to the rental unit as these are issues related to an ongoing tenancy.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recover the filing fee?

Background and Evidence

As the written tenancy agreement was written in a language other than English, I obtained testimony from the parties.

The tenant submitted that the tenancy began in March 2013, ended at the end of September 2013, monthly rent was \$930, and the tenant paid a security deposit of half the monthly rent.

The landlord submitted that the tenancy began on March 1, 2013, was for a fixed term of 6 months, monthly rent was \$920, and the tenant paid a security deposit of \$460.

The landlord pointed out that although the tenancy agreement is written in another language, the numbers \$920 and \$460 are present, as well as the rental address and start date of the tenancy. I found this to be the case.

The parties agreed that the security deposit has been returned to the tenant.

The tenant's monetary claim is \$1860, which is the equivalent of 2 months' rent, as the tenant claimed monthly rent was \$930.

In explanation the tenant submitted she is entitled to this compensation as the landlord required the tenants to move from the rental unit, without giving them a 2 Month Notice.

In response to my question, the tenant submitted that the landlord wrongfully asked them to move out, without reason or cause, and she and her roommate did move out.

In response, the landlord submitted that the tenancy agreement was for a 6 month, fixed term ending on September 30, at which time the parties were to evaluate whether or not the tenancy would continue on a month to month basis.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the tenant in this case, have the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 51 of the *Act* provides as follows:

(1) A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the landlord did not serve or issue such a 2 Month Notice to the tenant; rather, the landlord asked the tenant to move out.

Under the Residential Tenancy Act a tenant cannot be compelled to vacate a rental unit at the verbal request of the landlord. The tenant therefore had the choice to stay and would have been informed of such had she contacted the Residential Tenancy Branch seeking information or by reading the *Act*. The tenant also would have been informed of her options in addressing the actions of the landlord seeking to end the tenancy in a way not authorized by the *Act*.

Through the tenant's lack of knowledge of her rights under the *Act*, the tenant chose to leave rather than investigate her rights. I therefore find that, as the landlord did not issue the tenant a 2 Month Notice, which is entitles the tenant to receive the equivalent of 2 months' rent, the tenant's monetary claim for that amount must be dismissed.

I also dismiss the tenant's request to recover the filing fee, as I have dismissed her monetary claim.

I note that I did caution the landlord that she should become familiar with her obligations under the Residential Tenancy Act if she intended to continue conducting business as a landlord.

Conclusion

The tenant's application is 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: February 19, 2014

Residential Tenancy Branch

