



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stardust Motor Inn
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, OPT, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Two Month Notice to End Tenancy for landlords use of the property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues and to obtain an Order of Possession of the rental unit.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The parties were not given the opportunity to cross examine each other as the tenant left the conference call before it had concluded. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to have the Two Month Notice to End Tenancy cancelled?
- Is the tenant entitled to a Monetary Order for compensation for the Two Month Notice?
- Is the tenant entitled to an Order of Possession of the rental unit?

Background and Evidence

The parties agree that this tenancy started on January 28, 2006. The tenant rented a unit in a motel setting for a monthly rent of \$550.00. The parties advised that the tenant vacated the rental unit on January 28, 2014.

The tenant testifies that the landlord served the tenant with a receipt on which the landlord had hand written that the tenant must move out of the unit by January 28, 2014. The tenant testifies that this was not a legal notice. The tenant testifies that the landlord threatened to call the RCMP if the tenant did not vacate the rental unit by January 28, 2014. The tenant testifies that she tried to seek advance from her advocate but could not get hold of anyone so the tenant vacated the unit.

The tenant testifies that she no longer wants an Order of Possession for the rental unit due to the landlord's threats towards the tenant about calling the RCMP. The tenant testifies that the landlord also shouted at the tenant and threw the tenants mail at her. The tenant withdraws this section of her claim for an Order of Possession.

The tenant seeks compensation of \$550.00 due to this Two Month Notice the landlord served upon the tenant. The tenant testifies that she acted in good faith regarding the Notice and wants to recover this compensation from the landlord for having to move from the unit.

The landlord disputes the tenants claim. The landlord testifies that this is a motel and only eight of the 53 rooms are rented out on a monthly basis and therefore the landlord followed the *Hotel Act* and not the *Residential Tenancy Act* with regard to providing this tenant with Notice. The landlord agrees that this tenants unit was rented on a monthly basis.

The landlord testifies that he never threatened to call the RCMP. The landlord testifies that he did not bother the tenant in two months since issuing the eviction notice. The

landlord disputes that he has ever thrown the tenants mail at her. The landlord testifies that the tenant moved out in regard to the Notice that was given to her and therefore the tenant is not entitled to compensation.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. The landlord stated that he acted in accordance with the *Hotel Act*. I have no evidence before me from the landlord that this rental unit falls under any other *Act* other than the *Residential Tenancy Act*. Therefore, I deem that the Notice provided to the tenant was not a legal Notice under s. 49 of the *Act*.

Consequently, the tenant did not have to vacate the rental unit on the date the landlord put on his hand written note. The tenant did file an application to dispute the Notice but decided to vacate the unit instead. As the tenant choose to vacate the unit rather than wait for the outcome of this hearing; then I dismiss the tenant's application to cancel the Two Month Notice as no legal notice has been served upon the tenant and it is my decision that it was the tenants choice to vacate the unit.

With regard to the tenants claim for compensation of \$550.00; the tenant testifies that as she acted in good faith in vacating the rental unit in accordance with the landlords written notice the tenant seeks to recover compensation equivalent to one month's rent. I refer the parties to s. 51 of the *Act* which states:

51 (1) A tenant who receives a notice to end a 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.

As the landlord did not issue or serve a Notice under s. 49 of the Act, then there is no further provision under the *Act* for compensation to be awarded to the tenant as the Notice was invalid and the tenant did not have to vacate the rental unit. Consequently, this section of the tenants claim is dismissed.

Conclusion

The tenant's application is dismissed in its entirety without 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: February 24, 2014

Residential Tenancy Branch

