



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, CNR, CNL, MNDC, FF

For the landlord – OPC, MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant has applied to cancel a Two Month Notice to End Tenancy for landlords use of the property; to cancel a One Month Notice to End Tenancy for cause; to cancel a 10 Day Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for cause; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord stated that she has not served the tenant with a copy of her application and Notice of Hearing. The tenant had served the landlord with his application and Notice of Hearing by registered mail. The landlord confirms receipt of these documents.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the tenant withdraws the sections of their claim to cancel all three Notices to end Tenancy.

Preliminary Issues

The landlord is required to serve the tenant with a copy of their application and Notice of Hearing. As the landlord has advised that this was not done in accordance to s. 89 of the Act I must dismiss the landlord's application with leave to reapply. The hearing continued on the reminder of the tenant's application for a Monetary Order.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on December 15, 2012 for a month to month tenancy. Rent for this unit was \$1,150.00 per month and was due on the 1st of each month in advance.

The tenant testifies that the landlord served the tenant with a Two Month Notice to End Tenancy on January 05, 2014. This Notice did not provide a reason why the landlord was ending the tenancy but had an effective date of March 05, 2014. The tenant testifies that he gave the landlord a 10 Day Notice in writing to end the tenancy earlier than the effective date of the Notice and moved from the rental unit on January 30, 2014.

The tenant testifies that he was also served with a 10 Day Notice to End Tenancy for unpaid rent when no rent was outstanding and a One Month Notice to End Tenancy for cause. The tenant testifies that he acted in good faith in accordance with the Two Month Notice in giving the landlord notice to end the tenancy earlier. As the tenant had already paid the rent for January, 2014, the tenant seeks to recover this as his compensation for the Two Month Notice.

The landlord testifies that the Two Month Notice was issued in error and the landlord had meant to give the tenant a One Month Notice to End Tenancy for cause. The landlord testifies that the tenant was so noisy that she wanted to end the tenancy. The landlord agrees that the tenant provided a 10 day written Notice to end the tenancy for the end of January, 2014. The landlord also agrees that the tenant paid rent for January, 2014 of \$1,150.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a landlord issues a Notice to a tenant the landlord should pay particular attention to which Notice is issued and served upon the tenant. A Notice to End Tenancy is a legal document that can result in the end of a tenancy.

The landlord agrees that she issued the Two Month Notice and even if the landlord has stated that this was issued in error; if the tenant then provides 10 days written notice due to the Two Month Notice and acts in good faith to vacate the rental unit, then the tenant is still entitled to recover compensation for that Notice even if the landlord omitted to provide a reason on the Notice. The landlord has provided no evidence to support any reasons for the 10 Day Notice or the One Month Notice.

I refer the parties to s. 51 (1) 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.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Consequently it is my decision that the tenant is entitled to recover an amount equivalent to one month's rent from the landlord to an amount of **\$1,150.00** pursuant to s. 51(1) of the *Act*.

The tenant is also entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,200.00** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court as an order 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 27, 2014

Residential Tenancy Branch

