



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, LRE, LAT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant and agent had at least five potential witnesses available.

The tenant testified that she vacated the rental unit and surrendered vacant possession of the rental unit to the landlord on Wednesday, June 25, 2014, two days before this hearing. After some discussion, the tenant and her agent confirmed that the tenant was no longer seeking the cancellation of the 1 Month Notice or any of the other remedies identified on the tenant's application for dispute resolution, with the exception of the tenant's application for a monetary award of \$25,000.00. They also noted that circumstances have changed since the original application was submitted in that recent developments forced the tenant to leave the rental unit. They also referred to the tenant's subsequent discovery of black mould in the rental unit, which also prompted the tenant to leave this tenancy.

As requested by the tenant and her agent, the tenant's application for the following outcomes were withdrawn at the hearing:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Preliminary Issues – Service of Documents and Recent Developments

The tenant confirmed that she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which the landlord testified that he posted on the tenant's door on April 23, 2014. The above notices were served to the tenant in accordance with sections 88 and 90 of the *Act*. The tenant also confirmed that the landlord handed her the 1 Month Notice on April 30, 2014. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on May 9, 2014. I find that the tenant served the landlord with her hearing package in accordance with section 89 of the *Act*.

The tenant's agent (the agent) testified that he sent the landlord a copy of the tenant's written evidence by email on the afternoon of Wednesday, June 25, 2014. Although the landlord said that he had received this late written evidence, he said that he had not had a proper opportunity to review all of the material included in that evidence. The Residential Tenancy Branch (the RTB) also received the agent's written evidence on June 25, 2014, well after the time limit for submitting such evidence. At the hearing, both the tenant and her agent said that some of this written evidence only became apparent in the week preceding this hearing when the tenant discovered the full extent of the black mould in her rental unit.

The landlord testified that he sent the tenant a copy of his written evidence by registered mail on June 16, 2014. In accordance with sections 88 and 90 of the *Act*, the landlord's written evidence was deemed served to the tenant on June 23, 2014, the fifth business day after the landlord's mailing of these documents. While the agent and the tenant confirmed that they had received and reviewed the landlord's written evidence package, the agent objected to the landlord's late service of this evidence, as he and the tenant did not receive this until less than a week before this hearing.

At the hearing, both parties provided a brief description of their written submissions. The agent asked for consideration of the mould issue as part of the tenant's claim for a monetary award. The landlord confirmed that he was seeking the recovery of unpaid

rent from June 2014 and unpaid utilities that he considered owing. Although he has not yet submitted a separate application for dispute resolution and did not realize until this hearing that he could not make an oral request for a monetary award at this hearing, he said that he may consider submitting his own application for dispute resolution now that this tenancy has ended.

Both parties wanted their claims for a monetary award considered at this hearing. However, under these circumstances both parties have questioned the lateness of the other parties' submission of their written evidence. Both parties also planned to rely heavily on recent developments that have occurred since the tenant submitted her original application for dispute resolution.

I have considered, but rejected the agent's request for an adjournment of this hearing. I do so after considering Rule 2.3 of the RTB's Rules of Procedure, which enables me to make a finding during the course of a dispute resolution proceeding to dismiss disputes which I consider unrelated to the main focus of an application when these circumstances arise. In this case, I find that the tenant's original application and much of the evidence provided to me within the time frames allowed under the RTB's Rules of Procedure were directed at the landlord's attempt to end this tenancy for cause and the tenant's desire to continue this tenancy under terms acceptable to her. Of the 8 points identified in the Details of the Dispute attached to the tenant's application for dispute resolution, only one of them addresses the tenant's claim for a monetary award. In the tenant's summary of damages claimed in the Details of the Dispute almost \$20,000.00 of the requested \$25,000.00 was sought for punitive damages for a variety of features of this tenancy. Such vague and unclear statements in the tenant's original application lead me to conclude that the primary focus of the application was directed at the landlord's attempt to end her tenancy and the terms of that tenancy, as opposed to the request for a monetary award. Under these circumstances and as the situation with respect to both parties' requests for a monetary award have clearly changed since the tenant applied for dispute resolution, I dismiss the tenant's application for a monetary award with leave to reapply. I find that it would be more appropriate to have the tenant's application considered in a separate application as opposed to combining it with the original primary focus on whether this tenancy was to continue. I dismiss the tenant's application for a monetary award with leave to reapply as I consider it to have been unrelated to the primary focus of the application submitted by the tenant.

Conclusion

The tenant's application to cancel the 1 Month Notice and to obtain various non-monetary orders with respect to this tenancy are withdrawn.

The tenant's application for a monetary award for losses or damages arising out of this tenancy is dismissed with leave to reapply. Should the tenant decide to initiate a new and separate application for dispute resolution, she will need to submit a complete and separate set of written evidence within the time frames established in the RTB's Rules of Procedure.

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: June 27, 2014

Residential Tenancy Branch

