



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for landlord's use of property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant, the landlord, and the landlord's spouse, who is also a landlord but not named in the application, all attended the hearing. The named landlord and the tenant gave affirmed testimony. The parties were given the opportunity to question each other about the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the parties agreed that the notice to end the tenancy given by the landlord is cancelled and the tenancy continues. The tenant also advised that the remaining applications refer to recovery of the filing fee.

Issue(s) to be Decided

The only issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for recovery of the filing fee?

Background and Evidence

The tenant testified that this month-to-month tenancy began about 7 years ago and the tenant still resides in the rental unit. Rent in the amount of \$1,300.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$650.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant further testified that the landlord gave the tenant a notice stating that the rental unit was going to be sold. A copy of the letter has not been provided but the tenant read the letter and testified that it is dated April 8, 2015. The tenant called the Residential Tenancy Branch who advised that if the house were to sell the landlord would have to provide the tenant with a copy of the sales contract.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has also been provided. It is dated April 27, 2015 and contains an effective date of vacancy of June 30, 2015. The reason for issuing the notice states:

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

Later the same evening, the landlord called the tenant stating that the house had not sold. The tenant again called the Residential Tenancy Branch who advised that the tenant should dispute the notice or may have to move out, and in order to be sure that the notice is cancelled, the tenant should go through the process, which included paying a \$50.00 filing fee.

The landlord testified that the tenant knew before filing the application that the sale did not go through. The landlords had sold the house privately, but the deal was cancelled because the purchaser wanted vacant possession. Rather than holding the purchaser to the deal, the landlords agreed to cancel the agreement to purchase, and called the tenant.

The tenancy has continued and the landlords have now listed the home for sale with a realtor. On May 8, 2015 the For Sale Sign went up, and the tenant filed the application for dispute resolution the same day. The tenant did not need to file the application, and the landlords dispute that the tenant should recover the filing fee.

Analysis

The information received by the tenant from an Information Officer at the Residential Tenancy Branch is absolutely correct. Once a tenant is served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant has 15 days to dispute it by filing an application for dispute resolution, which requires a \$50.00 filing fee. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the notice. Had the landlord advised the tenant in writing that the notice was cancelled, there would not have been a need for the tenant to file the application for dispute resolution. Also, if the tenant had not filed the application, at any time during that 2 month period, the landlords could have changed their minds and requested an Order of Possession, and would likely have been successful.

The *Residential Tenancy Act* states that a party who causes another party to incur costs associated with the tenancy, the claiming party is entitled to recover those costs. Section 72 of the *Act* specifically states that I may order recovery of the filing fee.

Because the landlord did not cancel the notice in writing prior to the date the tenant filed the application for dispute resolution, I find that the tenant had no choice but to dispute the notice, and is entitled to recovery of the \$50.00 filing fee. I hereby grant a monetary order in favour of the tenant as against the landlord in that amount and order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 27, 2015 is hereby cancelled and the tenancy continues, by consent.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00. This order may be deducted from a future month of rent payable or otherwise recovered.

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 23, 2015

Residential Tenancy Branch

