



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, MNSD, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("the 2 Month Notice") pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties acknowledged receipt of the other party's materials for this hearing. It was noted that the tenant's evidentiary materials were submitted very late. However, the landlord testified that she had no objection to those materials being considered. The tenant's documents will be afforded the appropriate weight in the circumstances.

Preliminary Issue

The tenant testified that she wants to remain in the rental unit and have the tenancy continue. She testified that she applied for the return of her security deposit as a precaution to ensure that she in fact receives the deposit when the tenancy comes to an end. She withdrew her application for return of her security deposit at this time after reviewing section 38 of the *Act* and related Residential Tenancy Policy Guidelines that explain a security deposit is returnable when certain conditions are met at the end of a tenancy.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award for any loss as a result of this tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on June 1, 2012. The current landlord took over the rental unit and tenancy on January 1, 2015. Both parties agreed that a written tenancy agreement exists with respect to this rental unit and tenant. However neither party was able to produce or supply a copy of that agreement. Both parties agree that the tenancy was set as a fixed term tenancy but the start of that one year fixed term is unclear. The tenant testified that the one year fixed term began January 1, 2015. The current rental amount of \$1425.00 is payable on the first of each month. The landlord continues to hold a \$697.50 security deposit paid by the tenant at the start of the tenancy.

The landlord testified that she is struggling to meet her financial obligations at the current time. She testified that, for both financial and personal support, her daughter is moving into the rental unit. She testified that, when she and her daughter made the decision for her to move in, she served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use specifying that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse..."

The tenant testified that the landlord has created an "unliveable" environment in her rental unit home over the past several months. The tenant testified that, after discussions with the landlord about upgrades to the tenant's suite, the landlord commenced renovations on the rental unit in March 2015. The tenant testified that those renovations are still not complete. She also testified that she does not believe she should be required to pay any rent for the period the renovations were taking place. She stated the rental unit condition included;

- tools left behind and stored by construction workers;
- her furniture and major household items pushed to the centre of the room;
- stacks of wood throughout the suite;
- sawdust and wood chips everywhere;
- holes in the walls exposing internal wiring.

The tenant testified that the landlord did not charge her any rent for April 2015; that she was discounted \$425.00 for May 2015; and that she was only charged half rent (\$712.50) for June 2015. The tenant also acknowledged that she stopped payment on

her July 2015 rent cheque. The landlord testified that the July rent has not been paid by the tenant as of the date of this hearing.

Analysis

Section 49 of the *Act* provides that a landlord may end a tenancy for “landlord’s use”;

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

...

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(emphasis added)

The landlord did not dispute the tenant’s testimony that the current tenancy agreement for this rental unit is a one year fixed term from January 1, 2015 to December 31, 2015. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

Section 44 of the *Act* addresses how a tenancy ends, including a fixed term tenancy:

44 (1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy...

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the grounds for that notice. In this particular case, it is unnecessary to consider the validity of the landlord's reason to end tenancy. In the case of a fixed term tenancy, the tenancy will continue until its predetermined expiry date. There are very limited circumstances under which a landlord may end a fixed term tenancy. The reasons provided by the landlord, however legitimate are not sufficient to end a fixed term tenancy before the specified date on the residential tenancy agreement. I grant the tenant's application to cancel the notice to end tenancy.

With respect to the tenant's claim for a monetary order, I find that there is insufficient evidence to support the granting of such an order. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant has provided little evidence to support her claim that the rental unit has been "unlivable" since March 2015. She continued to reside in the unit. The tenant submitted photographs of the rental unit to support her submissions. However, those photographs illustrate what appears to be a finished and functional residence. The tenant testified that she was too busy to find somewhere else to stay. I find that a reasonable person in an "unlivable" residence would have made time and efforts to relocate, at least temporarily. I also find that the tenant has already been compensated sufficiently by the landlord for any inconvenience she may have suffered. A reduction in the amount of \$2537.50 has been provided to the tenant, representing almost two months of rent abatement.

The tenant both requested and sanctioned the work on the suite. Her own email evidence shows that she requested certain finishes to the unit and her requests were generally met by the landlord. The landlord has already compensated the tenant by rent reductions and I accept the landlord's testimony that the work on the rental unit has

been completed. Therefore, I find that the tenant is entitled to no further compensation as a result of her application for a monetary award.

As the tenant was not successful in her application for a monetary award, I do not find that she is entitled to recover the filing fee for this application.

Conclusion

I grant the tenant's application to cancel the Notice to End Tenancy. The tenancy will continue.

I dismiss the tenant's application for a monetary award or recovery of her filing fee.

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: August 21, 2015

Residential Tenancy Branch

