



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

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 the tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing, however no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the tenant. The tenant testified that the landlord was served with the Tenant's Application for Dispute Resolution and notice of this hearing on or about September 4, 2015 by registered mail. The tenant was given the opportunity to provide to me proof of that mailing by facsimile after the hearing had concluded. I have received from the tenant a copy of a cash register receipt from Canada Post bearing the date September 5, 2015 as well as a copy of a Registered Domestic Customer Receipt addressed to the landlord, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Should the notice to end the tenancy given by the landlord be cancelled?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this fixed-term tenancy began on December 1, 2014 and expires on November 30, 2015. The tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. Prior to the beginning of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlord listed the rental unit for sale about 4 or 5 months after the tenancy began and found a buyer on the condition that the tenant would move out by a specific date. The tenant sought advice from the Residential Tenancy Branch, and subsequently told the landlord that she would not sign an agreement to that effect. The sale did not go through and as a result, the landlord has sent mean and inappropriate text messages to the tenant and has been very unprofessional in a landlord and tenant relationship.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit, a copy of which has been provided. The tenant was away and found it upon her return on August 25 or 26, 2015. The notice is dated August 22, 2015 and contains an effective date of vacancy of October 1, 2015 for breach of a material term of the tenancy agreement.

The rental unit has since sold to another buyer, who is the tenant's new landlord and is not named as a party to this dispute. The landlord who signed the tenancy agreement and issued the notice to end the tenancy is the only respondent, in that the landlord had no reason or right to issue the notice, and the tenant seeks an order for recovery of the \$50.00 filing fee.

Analysis

I have reviewed the notice to end the tenancy, and I accept the undisputed testimony of the tenant that the landlord did not have cause to issue it. The landlord has not attended the hearing to seek to have the notice upheld or to establish that it was issued in accordance with the *Residential Tenancy Act*, and therefore, I hereby cancel it.

I also find that the tenant has named the appropriate landlord as a respondent. It is that landlord who signed the tenancy agreement and issued the notice, and I find that the named landlord is the proper party to be served.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee, and I hereby grant an order enforceable as a judgment in that amount as against the landlord.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause is hereby cancelled and the tenancy continues in the terms of the tenancy agreement.

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 is final and binding and may be enforced.

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: November 02, 2015

Residential Tenancy Branch

