



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 31, 2015, for a monetary order for compensation for loss under the Act, and to recover the filing fee.

Both parties appeared, legal counsel made submission on behalf of their respective client.

Preliminary matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy and to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply.

At the outset of the hearing counsel for the tenant argued that the legal principals of res judicata should be applied to this matter. Counsel submits the landlord has issued several notices to end tenancy, and a hearing was held on April 8, 2015, and a Decision was rendered on April 13, 2015. Filed in evidence is a copy of the Decision dated April 13, 2015. The file number has been noted on the covering page of this Decision.

Counsel for the tenant submits that at the April hearing, the landlords were given two opportunities to withdraw the notice to end tenancy issued on February 28, 2015, that was the subject of hearing, as it was obvious that the landlords had not indicated the proper reasons; however, the landlords wanted the matter to proceed.

Counsel for the tenant submits that any evidence that was submitted or should have been submitted at the first hearing should not be allowed, as it is unfair to the tenant.

Counsel for the landlords submits that it would be administratively unfair, not to allow the matter to be heard as it was a simple error made on the notice to end tenancy by the landlords.

Black's Law Dictionary 6th edition at page 1305 defines the principle of res judicata as follows:

A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

In this case, I find the principle of res judicata does apply. Counsel for the landlord argued that today's hearing is for a new reason stated in the Notice and should be heard on the merits, as it would be administratively unfair to the landlords not to allow the evidence to be reheard.

However, at the hearing on April 8, 2015, the landlords were given the opportunity to withdraw the notice to end the tenancy that was the subject of that hearing and re-issue a new notice with the correct reason stated. The landlords wanted the hearing to proceed and their evidence was presented.

The Arbitrator heard the evidence of the parties and determined the notice was not issued for the reasons stated. The Arbitrator made a final and binding decision upon the parties based on the evidence presented.

The landlords then issued the Notice on August 31, 2015, which is the subject of today's hearing. Although the landlord's accidentally or inadvertently indicated the wrong reason on the original notice to end tenancy issued on February 28, 2015, that does not allow the parties to rely on the same facts on a matter that has already been dismissed, or which should have been brought forward with reasonable diligence.

A party who makes a claim has the responsibility to bring forward their whole case, including the proper reason to end the tenancy; they are not entitled to split claims that are substantially for only one cause. Furthermore, parties are prevented from rearguing the same issues repeatedly.

Therefore, I find any evidence that was heard or should have been heard at the hearing on April 8, 2015, is barred from this proceeding due to the principle of res judicata.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlords to provide their evidence

submission first, as the landlords have the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued on August 31, 2015, be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on September 30, 2015.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.

Counsel for the landlords submit that the other occupants have been impacted by the tenant's previous actions and due to this the other occupants rights to quiet enjoyment continue to be impacted and have prevented the occupants from enjoying the property.

Counsel for the tenant submits that at the last hearing the Arbitrator cautioned the tenant that continued disruption of quiet enjoyment will place the future of the tenancy at risk. Counsel submits that there was no new complaint or incident that occurred after April 8, 2015, which would trigger the issuance of the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Under section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy for certain causes. A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

In this case, there has been no significant interference or unreasonable disturbance with any other occupant or the landlords since the last hearing held on April 8, 2015.

Although counsel for the landlords submit that the other occupants are still impacted by the tenant's previous behaviour, I find there has been no significant interference or unreasonable disturbance to justify a loss of quiet enjoyment to the other occupants or the landlords for the months following April 2015, Decision.

I find the evidence does not support the Notice was issued for the reasons stated. Therefore, I grant the tenant's application to cancel the Notice. The Notice issued on August 31, 2015, is cancelled and has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

As the tenant was successful with their application, I find the tenant is entitled to recover the filing fee from the landlords. Therefore, I find the tenant is entitled to a onetime rent reduction of \$50.00 from a future rent payable to the landlords to recover the cost of the filing fee.

Conclusion

The tenant's application to cancel the Notice is granted. The tenancy will continue until legally ended in accordance with the Act. The tenant is entitled to a onetime rent reduction of \$50.00 payable to the landlords to recover the 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: November 19, 2015

Residential Tenancy Branch