



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant on July 2, 2015 for the following reasons: to cancel a notice to end tenancy; for money owed or compensation for damage or loss under *Residential Tenancy Act* (the “Act”); for the Landlords to comply with the Act; and to recover the filing fee from the Landlords.

Preliminary Issues

The female Landlord appeared for the hearing with a Translator. However, the female Landlord did not need the translator throughout the hearing as she understood the proceedings very clearly. The hearing was also attended by an agent of the Tenant who was also the Tenant’s brother.

At the start of the hearing, the Landlord submitted that the Tenant’s agent did not have the authority to represent the Tenant and that the Tenant’s written submissions and request for compensation amounted to extortion as the signature purported to be that of the Tenant was not his and had been forged. Therefore, this invalidated the Tenant’s Application. The Tenant’s agent explained that he had full authority to represent the Tenant for this hearing and that the claim was not fraudulent or an attempt to extort the Landlord using the identity or guise of the Tenant. As a result, I turned to Policy Guideline 26 to the Act which defines the role of an Agent as follows:

An agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord, and as such may have evidence to present at the hearing. A tenant may appoint any trusted person as their agent. Where a party chooses to attend the hearing, they are entitled to remain with their agent throughout. Unlike

advocates, agents have full authority to settle the claims and may be named as a party to the dispute. An agent may:

- Apply for dispute resolution on behalf of the landlord or tenant*
- Prepare, organize, serve and submit evidence*
- Make submissions on behalf of the party*
- Ask questions of the other party and witnesses with respect to their evidence*
- Settle claims*

Agents may be required to provide written verification that they have been appointed by the landlord or tenant to act or appear on their behalf at the dispute resolution proceeding and that they have full authority to settle a claim. This is particularly important when the agent has not had direct involvement during the tenancy. Written verification is not required where a party attends the hearing with his or her agent.

[Reproduced as written]

In addition, Rule 6.7 of the Residential Tenancy Branch Rules of Procedure states that a party may be represented by an agent or a lawyer. As a result of the Landlord's submissions, I asked the Tenant's agent if he could contact the Tenant to dial into the hearing to confirm that he had authority to act on his behalf and that it was indeed the Tenant that had made the Application for the monetary claim.

As a result, the Tenant dialed into the hearing and provided affirmed testimony that he had given his brother permission to act on his behalf for this hearing and that he had made the Application. The Tenant was invited to remain in the hearing but explained that he was not able to do so as he was at work and his brother was representing him.

The hearing continued with the Tenant's agent and Landlord who provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application and documentary evidence. The Tenant's agent denied receipt of the Landlord's documentary evidence. However, the Landlord provided Canada Post evidence to show that the evidence being relied upon for this hearing had been sent to the Tenant using the address on the Application. The Tenant's agent explained that the address provided on the Application had since been vacated by the Tenant. I informed the Tenant's agent that the hearing would continue and that I would be considering the Landlord's documentary evidence during the hearing. This is because it had been served in accordance with the Rules of Procedure and the Tenant had an obligation to inform the Landlord if he had moved address since making the Application. The Tenant's agent did not take any issue with this.

The Tenant's Application sought to claim monetary compensation from the Landlord pursuant to a 2 month notice that had been served to end the tenancy. The parties confirmed the service and receipt of the notice to end tenancy and that the Tenant had moved out on the effective date of the notice on April 30, 2015. Therefore, I dismissed the Tenant's Application to cancel the notice to end tenancy as this is now a moot issue.

The Tenant seeks unpaid compensation pursuant to Section 51(1) of the Act. In addition, the Tenant also seeks the compensation payable to the Tenant under Section 51(2) of the Act but only claimed one month's compensation in this respect. However, the Tenant was informed that the compensation payable under Section 51(2) of the Act is two month's rent and not the one month's rent claimed by the Tenant. Therefore, pursuant to Section 64(3) (c) of the Act, I amended the Tenant's monetary claim to three months' rent in the amount of \$3,900.00.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. After the parties had provided their evidence, I offered the parties an opportunity to settle the Tenant's Application. The parties discussed the issues between them, turned their mind to compromise, and reached an agreement to resolve the dispute.

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. The Landlord agreed to pay the Tenant \$2,650.00 in full satisfaction of the Tenant's Application. The Tenant is issued with a Monetary Order which is enforceable in the Provincial Court (Small Claims) as an order of that court if the Landlord fails to make this payment. The parties confirmed their voluntary agreement to resolution in this matter during and at the conclusion of the hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act

Dated: December 21, 2015

Residential Tenancy Branch

