



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASC PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, MNDC, OLC, 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenant's notice of hearing package and his submitted documentary evidence. The tenant has confirmed receipt of the landlord's submitted documentary evidence. I find based upon the undisputed affirmed testimony of both parties that the landlord is deemed served with the notice of hearing package and that both parties are deemed served with the submitted documentary evidence by the other party as per section 90 of the Act.

Preliminary Issue(s)

The hearing commenced but was unable to be completed after 65 minutes. The hearing was adjourned to January 22, 2016 for continuation. Both parties were cautioned that no further evidence would be accepted as the hearing has commenced. The hearing was reconvened on January 22, 2016 and both parties attended.

During the hearing counsel, J.M. for the landlord made a request to sever the tenant's monetary claim as it was unrelated to the tenant's application to cancel the notice to end tenancy for landlord's use. The tenant disputed the request to sever.

Rules of Procedures #2.3 state,

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find upon review of the submissions of both parties that the tenant's monetary claims are not sufficiently related to the main issue of cancelling the notice to end tenancy to be dealt with together. As such, this hearing shall proceed with only the tenant's request to cancel or the landlord's request to uphold the Notice to End Tenancy dated August 24, 2015 and the request for recovery of the filing fee. The tenant's monetary claim is dismissed with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of both parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the claim and my findings around it are set out below.

This tenancy began on November 11, 2008 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated November 12, 2008. The monthly rent began as \$760.00 payable on the 1st day of each month and a security deposit of \$380.00 was paid on November 8, 2008.

The tenant seeks an order to cancel the 2 Month Notice dated August 24, 2015 and recovery of the filing fee.

Both parties confirmed that the landlord served the tenant with a 2 Month Notice dated August 24, 2015 sent by regular Canada Post Mail. The tenant received the 2 Month Notice on September 9, 2015. The 2 Month Notice displays an effective end of tenancy date of November 1, 2015 with one reason for cause selected.

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord stated that a plan for a major renovation of the rental unit requires the tenant's rental to be vacant during construction. The landlord stated that there was a significant water issue that has caused penetration of the building roof. The landlord stated that re-sloping of the roof was required to properly drain the water as it was puddling over the rental unit. The

landlord has submitted copies of a 92 page package which also consist of the building permit application, plans and photographs. The landlord stated that a major portion of the drywall needed to be removed as the landlord believes that there was water damage from the roof and that the contractor was unsure of how much water penetration has occurred. The landlord also stated that they believe that there is mold due to the water penetration and that there is asbestos present in the building materials.

The tenant disputes this stating that the landlord has no basis for these reasons for vacant possession and that the landlord has failed to provide any evidence to prove that there is any substance to the claim that repairs are needed to the rental unit that are of a nature that require vacant possession. The tenant has stated that at his own expense had air testing done to determine that no mold exists in his rental unit. The tenant has also hired a licensed home inspector that has determined that there is no water damage and no dampness in the rental unit.

Both parties confirmed that since the application was filed by the tenant that the roof has now been closed and work has finished on the roof.

The landlord confirmed in her direct testimony that no exploratory work has been done to determine what if any mold/asbestos exists in the rental property, but stressed that based upon their experience and the age of the building that this was highly likely.

The tenant disputes the landlords' "good faith" in that there is no proof that vacant possession is required. The tenant has stated that the local municipal authority has determined that the plans submitted by the landlord are not of a nature to restore the rental property for health of safety reasons. The tenant was told that these plans were for "cosmetic" reasons only.

Analysis

I accept the undisputed evidence of both parties and find that the landlord has properly served the tenant with the 2 Month Notice dated August 24, 2015 by Canada Post Registered Mail.

Section 49 (6) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord has all necessary permits and approvals required by law, and intends in good faith to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

I find on a balance of probabilities based upon the evidence of both parties that the landlord has failed to provide sufficient evidence that vacant possession of the rental unit is required. The landlord has no clear evidence that mold or asbestos is present in the rental unit and relies strictly on their experience. The tenant has had air quality testing performed which indicate no dampness or presence of mold. The tenant has also had a licensed home inspector inspect the

property who has determined that there was no evidence of water damage which would lead to mold. The landlord has provided no evidence that asbestos is present.

The tenant's application to cancel the landlord's 2 Month Notice dated August 24, 2015 is granted. The 2 Month Notice is set aside and the tenancy shall continue.

Having been successful in his application the tenant is entitled to recovery of the 10.00 filing fee.

Conclusion

The tenant's application is granted. The 2 Month Notice dated August 24, 2015 is set aside and the tenancy shall continue.

The tenant is granted a monetary order of \$100.00 for recovery of 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: January 25, 2016

Residential Tenancy Branch

