



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, 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; and
- authorization to recover his 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, to make submissions, to call witnesses and to cross-examine one another.

The landlord admitted service of the tenant's dispute resolution package.

Scope of Hearing

At the hearing the tenant and landlord indicated that since the issuance of the 2 Month Notice the landlord has issued a 1 Month Notice to End Tenancy for Cause (1 Month Notice) as well as a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice).

I asked the tenant multiple times if he was amending his application to cancel these notices. The tenant indicated that he did not think he needed to amend his application because he had already filed an application to dispute the 2 Month Notice.

The tenant's application is not amended to include request to cancel the 10 Day Notice or 2 Month Notice.

The tenant's application is to cancel the 2 Month Notice and for monetary compensation for the landlord terminating services as well as the landlord renting a suite that did not comply with municipal bylaws. These monetary claims do not relate to the 2 Month Notice.

Residential Tenancy Branch Rules of Procedure (the Rules), Rule 2.3 states that claims made in the application must be related to each other. If claims are unrelated an arbitrator may use his or her discretion to dismiss unrelated claims with or without leave to reapply.

I informed the tenant at the hearing that as his application for compensation was unrelated to the 2 Month Notice, that portion of his claim was dismissed with leave to reapply.

Service of Landlord's Evidence

The landlord testified that she served her evidence on 22 February 2016 by registered mail to the tenant. The tenant testified that he attempted to retrieve the package from Canada Post. The tenant testified that he was unable to retrieve the mailing as the package was not addressed in his full name, but only his first initial.

The evidence includes cheque images and text messages in support of a subsequently issued 1 Month Notice to End Tenancy for Cause (1 Month Notice) as well as other irrelevant evidence. The package also included a two page written submission largely in relation to issues other than the 2 Month Notice.

The Rules set out that evidence at a hearing must be relevant:

3.6 Evidence must be relevant

All evidence must be relevant to the claim(s) being made in the Application(s) for Dispute Resolution.

The Arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to hear evidence that they determine is not relevant.

“Relevant” is defined in the Rules:

Relevant evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. Argument is relevant if it relates to or bears upon the matter at hand.

On the basis that the landlord’s submissions and evidence do not bear upon the issue of the 2 Month Notice, the landlord’s evidence is excluded.

Issue(s) to be Decided

Should the landlord’s 2 Month Notice be cancelled? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

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

This tenancy began 1 August 2015. Monthly rent of \$800.00 is due on the first. The landlord continues to hold the tenant’s security deposit in the amount of \$400.00.

On 6 January 2016 the landlord issued the 2 Month Notice to the tenant. The landlord served the tenant in person. The 2 Month Notice set out that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The landlord testified that she served the 2 Month Notice because of difficulties in the tenancy. In particular, the landlord testified that she was bothered by the tenant’s use of marijuana and the tenant’s aggressive conduct towards the landlord and her family. The landlord repeated several times over the course of her testimony that she “just want[s] to get him out.”

The tenant testified that the landlord has proposed that her best friend will occupy the rental unit.

Analysis

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy

the rental unit. Close family member is defined in subsection 49(1) and does not include a best friend.

The only evidence before me indicates that the landlord was seeking some grounds by which to end the tenancy, and, at best, her best friend is going to occupy the rental unit. On this basis, the landlord has failed to show that she intends to use the rental unit for the purpose set out in the 2 Month Notice. Accordingly, the landlord has failed to show that she has grounds to end the tenancy. I find that the 2 Month Notice is invalid. The tenancy will continue until it is ended in accordance with the Act.

As the tenant has been successful in his application, he is entitled to recovery his filing fee from the landlord.

Conclusion

The 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

The tenant's application for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement is dismissed with leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$100.00. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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

Dated: March 07, 2016

Residential Tenancy Branch

