



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 dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order and an order to reduce rent.

The hearing was conducted via teleconference and was attended by the tenant and her witness.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 18, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

In addition, I note that the landlord had served two packages of evidence to the tenant and submitted two packages to the Residential Tenancy Branch (RTB). These two packages were received by the RTB on April 8, 2016

Based on the testimony of the tenant and the fact the landlord has served evidence to both the tenant and the RTB, I find that the landlord has been sufficiently served with the documents and was sufficiently aware of this hearing pursuant to the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's monetary claim and request for reduced rent. The parties were given a priority

hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's monetary claim and request to reduce rent are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's monetary claim and request for reduced rent. I grant the tenant leave to re-apply for her monetary claim and reduced rent.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on March 3, 2016 with an effective vacancy date of May 1, 2016 citing the tenant is repeatedly late paying rent.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. The guideline goes on to say that it does not matter whether the late payments are consecutive, however if the late payments are far apart an arbitrator may determine that the tenant cannot be said to be repeatedly late.

As the landlord failed to attend this hearing and present her evidence and testimony in regard to why she issued the 1 Month Notice to End Tenancy for Cause I find the landlord has failed to establish that she has cause to end the tenancy.

As such, I find I have no authority under Section 55(1) to issue the landlord an order of possession.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued March 3, 2016 is cancelled and the tenancy remains in full force and effect.

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: April 27, 2016

Residential Tenancy Branch