



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPL
For the tenant: CNL FF

Introduction

This hearing dealt with cross-applications for dispute resolution under the *Residential Tenancy Act* (the “Act”) by both parties. The landlord applied for an order of possession based on a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”). The tenant applied to cancel the 2 Month Notice and recover the cost of the filing fee.

The tenant, an agent for the landlord (the “agent”) and a witness for the landlord (the “witness”) attended the teleconference hearing. The witness did not provide testimony during the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The agent testified that the landlord did not submit evidence in response to the tenant’s application.

Issues to be Decided

- Should the 2 Month Notice be cancelled or upheld?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on August 1, 2009 and reverted to a month to month tenancy after August 1, 2010. The parties also agreed that current

monthly rent of \$1,075.00 is due on the first day of each month. Both parties confirmed that the tenant paid a security deposit of \$525.00 at the start of the tenancy.

The parties agreed that the landlord served the tenant with a 2 Month Notice dated March 28, 2016 and that the tenant found the 2 Month Notice posted to his door on March 28, 2016. The tenant disputed the 2 Month Notice on April 8, 2016. Neither party submitted a copy of the 2 Month Notice; however, both parties agreed that a 2 Month Notice existed.

The parties agreed that the 2 Month Notice states the reason to end the tenancy as “the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The tenant testified that he disputes the reason as claimed by the landlord and has not seen any permits for such work claimed. The landlord confirmed that she did not submit any permits or other documents in support of the reason as stated on the 2 Month Notice.

The agent was advised that I did not need to hear from the witness as at the very least, I would have expected the landlord to submit a copy of the permits described on the 2 Month Notice or other documentation to support the reason listed on the 2 Month Notice. The agent confirmed that the landlord did not serve any documentary evidence on the tenant or the Residential Tenancy Branch in support of their Application for an order of possession based on a 2 Month Notice.

Analysis

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

The 2 Month Notice dated March 28, 2016 was confirmed as received by the tenant the same date and disputed on April 8, 2016, which I find is within the fifteen day timeline provided for under section 49 of the *Act* to dispute a 2 Month Notice. When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled and the tenancy will be ordered to continue.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The agent confirmed that she did not serve a copy of permits or other documentation to support the reason as indicated on the 2 Month Notice. Therefore, I find the landlord provided insufficient evidence to prove the reason indicated on the 2 Month Notice. At the very least, I would have expected the agent to supply a copy of all permits that support the reason indicated on the 2 Month Notice or a copy of any documents which indicate whether or not a permit is required. In the absence of any supporting documents, I find the landlord is unable to meet the burden of proof for the reason as stated on the 2 Month Notice. Given the above, **I cancel** the 2 Month Notice due to insufficient evidence.

I order the tenancy to continue until ended in accordance with the *Act*.

As a result of the above, the landlord's application is **dismissed without leave to reapply** due to insufficient evidence. The tenant's application is successful.

As the tenant's application was successful, I find that the tenant is entitled to monetary compensation pursuant to section 67 of the *Act*, in the amount of **\$100.00** to recover the cost of filing fee. **I grant** the tenant a one-time rent reduction in the amount of **\$100.00** from June 2016 rent in full satisfaction of the tenant's recovery of the cost of the filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application is successful.

The 2 Month Notice issued by the landlord is cancelled due to insufficient evidence. The tenancy has been ordered to continue until ended in accordance with the *Act*.

I grant the tenant a one-time rent reduction in the amount of \$100.00 from June 2016 rent in full satisfaction of the tenant's recovery of the cost of the filing fee.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 5, 2016

Residential Tenancy Branch