



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, MNSD, OLC, RR, FF, O

Introduction

This hearing was convened by way of a conference call in response to a Tenants' Application for Dispute Resolution (the "Application") to cancel two notices to end tenancy for the Landlords' use of the property. The Tenants also applied for: monetary compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for the return of their security deposit; for the Landlord to comply with the Act; to reduce rent for repairs, services or facilities agreed upon but not provided; to recover the filing fee from the Landlords; and for "Other" issues. One of the Tenants and legal counsel for the Landlords appeared for the hearing. The Tenant provided affirmed testimony and legal counsel made submissions in the absence of the Landlords. Legal counsel confirmed receipt of the Tenants' Application and confirmed that the Landlords had not provided any documentary evidence prior to the hearing.

At the start of the hearing, the Tenant confirmed that this tenancy was still in effect. As a result, I asked the Tenant what issues were required to be dealt with in this hearing. The Tenant explained that he was seeking to cancel two notices to end tenancy for the Landlord's use of the property, one dated May 18, 2016 and one dated May 28, 2016. The Tenant also explained that he requested from the Landlords: half a month's security deposit; three month's rent in cash which they had paid for the last three months of the tenancy; and, a mail key.

Preliminary Findings

The parties agreed at the start of the hearing that they had signed a tenancy agreement for a fixed term tenancy of 1.5 years due to finish on November 30, 2017. In relation to the two notices to end tenancy, legal counsel acknowledged that the notices to end tenancy could not be issued in a fixed term tenancy. This was confirmed with legal counsel in the hearing. To support this I pointed the parties to Section 49(2) (c) and Policy Guideline 30 to the Act on fixed term tenancies which prevents a landlord from issuing a tenant with a notice for owner occupancy in a fixed term period. I did offer the

parties an opportunity to settle the matter of ending the tenancy through mutual resolution. However, the Tenant explained that they were having ongoing discussion with the Landlords regarding this and that they would prefer to continue with these discussions outside of these proceedings. As a result, I allowed the parties to withdraw both notices to end tenancy which are now of no use and effect.

In relation to the Tenant's remaining issues, legal counsel submitted that he understood Section 19(1) of the Act which prevents a landlord from accepting a security deposit greater than half a month's rent. Legal counsel was also informed that the Act does not allow a landlord to request and take rent for the last three months of the tenancy. Legal counsel confirmed that the Tenants had obtained a mail key at their own cost and the Landlords were willing to compensate them \$40.00 for this expense. Legal counsel confirmed that he had a cheque for the Tenants in the amount of \$10,540.00 which comprised the return of half a month's security deposit, three months rent and \$40.00 for the mail key. The Tenant agreed to receive this amount to settle the remainder of his Application. As the Tenants would have been successful in cancelling the Notice, the Tenants would have been eligible to recover their filing fee pursuant to Section 72(1) of the Act. Pursuant to Section 72(2) (a) the parties agreed the Tenants could deduct the \$100.00 filing fee paid to make this Application from their next installment of rent.

Conclusion

The notices to end tenancy for Landlords' use of the property dated May 18 and May 28, 2016 were withdrawn by the parties. The Landlords will pay the Tenants \$10,540.00 to settle the Tenants' monetary claim. The Tenants are allowed to deduct their filing fee from their next installment of rent. No further issues were raised during the hearing and I did not make any legal findings in this matter. This file is now closed. 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: June 27, 2016

Residential Tenancy Branch