



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC OLC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on June 16, 2016. The Tenant filed seeking: an order to cancel a 2 Month Notice to end tenancy for landlord's use; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; order the Landlord to comply with the *Act*, regulation or tenancy agreement; and to recover the cost of the filing fee.

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Tenant's application I have determined that I will not deal with all the dispute issues the Tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Tenant's request to set aside, or cancel the Landlord's 2 month Notice to End Tenancy and recovery of the filing fee; and I dismiss the balance of the Tenant's claim with leave to re-apply.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, the Tenant's Agent, and the Tenant's translator. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Notwithstanding the Landlord and Tenant displaying English as a second language and notwithstanding the Tenant having a translator attend the hearing with her, both the Landlord and Tenant displayed a high functioning understanding and/or command of the English language during this hearing. Specifically, both the Landlord and Tenant answered my questions intelligently and each stated they understood what was said each time I clarified a question and/or rephrased their responses.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the 2 Month Notice to end tenancy been withdrawn?

Background and Evidence

The undisputed evidence was the two parties entered into a written 1 year fixed term tenancy agreement that began on October 1, 2015. Rent is payable on the first of each month in the amount of \$650.00. No security or pet deposits were required to be paid by the Tenant.

Upon review of the 2 Month Notice to end tenancy issued June 13, 2016 I informed both parties that the *Act* stipulates the landlord could not end the tenancy prior to the end of a fixed term.

The Landlord testified he did not want to proceed with enforcing the 2 Month Notice. Upon further clarification the Landlord confirmed he wished to withdraw the 2 Month Notice.

The Tenant confirmed she understood that the 2 Month Notice had been withdrawn and that she had leave to reapply if she wished to seek monetary compensation.

Analysis

Section 49(2) of the *Act* stipulates a landlord may end the tenancy for the purpose of their own use by giving notice to end the tenancy effective on a date that must be not earlier than the date specified as the end of the fixed term tenancy.

After informing the parties of section 49(2) of the *Act* during the hearing, the Landlord withdrew the 2 Month Notice issued June 13, 2016. Accordingly, no further analysis is required.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

The *Act* and Regulations governs are residential tenancy agreements in the Province of B.C. Therefore, both the Landlord and the Tenant are required to comply with the *Act*, Regulation, and tenancy agreement, pursuant to section 62 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

I conclude the Tenant was successful with her application as the Landlord waited until the hearing to withdraw the 2 Month Notice. Therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the *Act*.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce their rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is \$100.00.

In the event this tenancy ends prior to the Tenant recovering the filing fee a monetary order has been issued and must be served upon the Landlord.

Conclusion

The 2 Month Notice was withdrawn and the Tenant was awarded recovery of her \$100.00 filing fee.

This decision is final, legally binding, 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: July 25, 2016

Residential Tenancy Branch