



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, O

Introduction

This hearing was convened by way of a telephone conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the following reasons: to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”); for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and for “Other” issues, namely the return of the Tenant’s personal property.

An agent for the company Landlord (the “Landlord”) and the Tenant appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application and both parties confirmed receipt of each other’s small amount of documentary evidence served prior to the hearing.

The parties were informed of the instructions of the proceedings and no questions were raised regarding the hearing process. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence relating to the issues to be decided.

Issues to be Decided

- Has the Tenant established that the Notice ought to be cancelled?
- Is the Landlord required to return the Tenant’s personal property?
- What is to happen to the Tenant’s monetary claim?

Background and Evidence

The parties agreed that this tenancy of a rental unit in a residential building started in February 2011. Although one was not provided into evidence for this hearing, the parties agreed that they had signed a tenancy agreement which required the Tenant to

pay rent in the amount of \$415.00 on the first day of each month. The current rent amount payable is \$445.00. The Tenant paid the Landlord a security deposit in the amount of \$215.00 at the start of the tenancy which is being retained by the Landlord in trust for the Tenant.

The Tenant explained in the details section of his Application that the Landlord had only served him page 1 of the Notice. As a result, I asked the Landlord to explain the service of the Notice. The Landlord testified that on July 6, 2016 there was a flooding event that occurred in the rental unit. As a result, the Landlord had to enter the rental unit in an emergency to deal with the flood. The Landlord testified that in order to effect the clean-up, they had to remove the Tenant's personal belongings. At this time, the Landlord noticed that the Tenant's rental unit was filthy and covered in junk. The Landlord testified that the rental unit was being used by the Tenant as a storage unit instead of one for residing in. The Landlord provided photographic evidence of what was observed on July 6, 2016.

The Landlord testified that the Tenant was then served with a breach letter and the Notice by placing them in an envelope and posting them on the door located inside of the rental unit on July 6, 2016. The first page of the two-page Notice was provided into evidence by the Tenant. The Landlord did not provide a copy of the Notice. The Landlord testified that he had served the Tenant with the second page of the Notice. As a result, I asked the Landlord to explain the reason he had elected on page 2 of the Notice. The Landlord kept referring me to the handwritten reason he had indicated on page 1 of the Notice which stated "Tenant not living in room – using as storage". The Landlord was asked several times about the reason on the second page of the Notice and then eventually, after he located the second page of the Notice, he stated that he had not elected a reason on the second page of the Notice.

The Tenant vehemently denied that he was served with the second page of the Notice and testified that the Landlord had also documented incorrect personal information. The Tenant stated that he found the Notice taped to his bathroom door which was closed and he did not see the documents until several days after they had been posted there by the Landlord.

The Tenant testified that after the flooding event, the Landlord had moved his personal property into storage and had not returned this back to him. The Landlord acknowledged that he had the Tenant's personal property and that the Tenant could have this back at any time. The Landlord agreed to return the Tenant's personal property back to him by September 25, 2016 and that the parties would make arrangements for the exact date the Landlord will bring it to the Tenant's rental unit.

The Tenant stated that he had a pest problem with cockroaches and bed bugs from the start of the tenancy. When the Tenant was asked whether he had put the Landlord on notice of this issue in writing, the Tenant stated that he had not but that the Landlord had been carrying out routine pest maintenance to eradicate the problem. However, this was not working. The Tenant stated that he will put the Landlord on written notice and provide him with evidence of the pest issue and give the Landlord an opportunity to increase efforts to eradicate the pest issue.

The Tenant stated during the hearing that he wanted monetary compensation from the Landlord because he had failed to provide utilities as part of the agreement, such as cablevision and internet. The Tenant indicated that he had a monetary claim for other costs he was claiming from the Landlord that he was going to be applying for and that he would address the issue of monetary compensation with those claims.

Analysis

I first turn my mind to whether the Notice should be cancelled. Section 52(d) of the Act states that in order for a notice to end tenancy to be effective, it must state the grounds for ending the tenancy. In this case, I am not satisfied by the parties' evidence that the Tenant was served with the second page of the Notice. The Landlord acknowledged that he had not completed a reason on the second page of the Notice and therefore, I accept on the balance of probabilities that the Tenant was not served with the second page.

The second page of the Notice contains important information about the rights a tenant has to dispute the Notice and requires a reason to be elected to end the tenancy. I noted that the Tenant did not make his Application to dispute the Notice until July 29, 2016 and that this is outside of the 10 day time limit the Tenant had to dispute it. However, I find the Tenant was prejudiced by not having the information that was contained on the second page of the Notice. While the Tenant was served with a breach letter indicating the reason why the Landlord sought to end the tenancy, I find that the Landlord's failure to select the exact reason on page 2 of the Notice is contrary to the Act, and that it was not possible to interpret the handwritten reason on page 1 of the Notice and extrapolate this to a particular reason(s) on page 2 of the Notice without the consent or discussion of the parties.

Therefore, based on the foregoing, I must cancel the Notice as it does not comply with the Act and disadvantaged the Tenant by not providing access to pertinent information on the rights and obligations the Tenant had under the Notice. The tenancy will continue

until such time it is ended pursuant to the Act and the Landlord is at liberty to issue the Tenant with another Notice.

In relation to the return of the Tenant's personal property, the parties are to make arrangements for the Landlord to take the Tenant's personal property that was removed from his rental unit on July 6, 2016 and return it to him at the rental unit no later than September 25, 2016.

With respect to the pest issues, the Tenant agreed that he is going to put the Landlord on written notice of pests that are not being eradicated through the routine pest maintenance and give the Landlord an opportunity to examine the issue and develop an action plan. The Tenant is at liberty to re-apply and submit evidence of the pest problem, which was not before me for at this hearing, if the parties are not able to move forward with an action plan and subsequent eradication.

The Tenant agreed that he would consider his monetary claim he disclosed in this Application through a separate Application that he was making for other claims so that these matters could be dealt with together.

Conclusion

The Notice dated July 6, 2016 is cancelled. The tenancy will resume until it is ended in accordance with the Act. The Landlord is to return the Tenant's personal property by September 25, 2016. The Tenant's Application for monetary compensation is dismissed with leave to re-apply.

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: September 19, 2016

Residential Tenancy Branch