



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, MNDC, RR

Introduction

The Application for Dispute Resolution filed by the Tenants seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated November 30, 2016
- b. An order for emergency repairs
- c. A monetary order in the sum of \$25,000.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing and the Amended Application for Dispute Resolution was sufficiently served on the landlord.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling the two month Notice to End Tenancy dated November 30, 2016?
- b. Whether the tenants are entitled to an order for emergency repairs?
- c. Whether the tenants are entitled to a monetary order and if how much?

Background and Evidence

The tenancy began 11 years ago. The rent was originally \$1500 per month. It was reduced to \$1200 and reduced again to \$800 per month.

The landlord sold the rental property with the new owners taking possession on November 24, 2016.

The tenants produced a Termination agreement with the new owners in which they agreed to vacate by February 28, 2017 with reduction of rent to \$400 per month.

Analysis:

I dismissed the tenants' application to cancel the two month Notice to End Tenancy dated November 30, 2016 without leave to re-apply. That Notice was issued by the new owners who are not a party to this application. In any event, the tenants and the new owners have reached a settlement in writing in which the Tenants have agreed to vacate the rental unit by February 28, 2017.

I dismissed the Tenants application for an order to make emergency repairs without leave to re-apply as the property has been sold and the respondent does not have the legal right to enter the property to make such repairs.

The original Application for Dispute Resolution filed by the Tenants made a claim for a monetary order in the sum of \$5000. The Amendment increased that claim to \$25,000. The Tenants have not filed a monetary order worksheet and have not provided particulars of what they are claiming. I ordered that the application for a monetary order be dismissed with liberty to re-apply for the following reasons:

- I do not accept the submission of the landlord that the tenants' claim is part of the monetary order made by the previous arbitrator in a decision dated October 20, 2016 in the sum of \$10,000. The previous arbitrator stated "...The tenants have an application before the Residential Tenancy Branch for an order that the landlord make emergency repairs for health or safety reasons, and any further reduction in rent should not be considered until a Decision has been rendered in that application. Therefore I dismiss that portion of the application with leave to re-apply." The tenants were granted the right to re-apply in that decision.
- One of the fundamental principles of our legal system is that an applicant must give the other side sufficient notice of the claims they are making so that they can mount a defense. The Branch has assisted parties by requiring that they file a Monetary Order worksheet which sets out the particulars of the claim. The tenants failed to file a monetary order worksheet. It is not possible to determine from the Application filed by the Tenants the claims they are making. I determined that to proceed with the hearing at this time would result in a denial of the principles of natural justice. I determined it was appropriate to dismiss the tenants' application for a monetary order with leave to re-apply.

- The landlord has filed an Application for Dispute Resolution seeking a monetary order and that hearing is set for May 2017. The tenants are encouraged that should they re-apply they should do so quickly and ask the Registry to set it for the same time as the landlord's claim as a cross-application.
- The photographs relied on by the tenants are illegible.
- The tenants refer to digital evidence but the digital evidence was not included in the file.
- The landlord submitted evidence with respect to the previous application for emergency repairs that was cancelled by the Tenants. That evidence has not been added to this file.

In summary I ordered that the Tenants' application for a monetary order be dismissed with liberty to re-apply.

Conclusion:

I dismissed the tenants' application for an order cancelling the 2 month Notice to End Tenancy dated November 30, 2016 and for emergency repairs without leave to re-apply. I dismissed the Tenants' application for a monetary order 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: January 10, 2017

Residential Tenancy Branch