



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, OLC, FF

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application.

At the hearing the Tenant stated that the Tenants intend to vacate the rental unit by February 28, 2017 in accordance with the Two Month Notice to End Tenancy that is the subject of these proceedings, and he withdrew the application to cancel this Notice to End Tenancy.

The Tenant stated that on January 09, 2017 the Application for Dispute Resolution, the Notice of Hearing, and 76 pages of evidence were served to the Landlord, via registered mail. The female Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On January 27, 2017 the Landlord submitted 155 pages of evidence to the Residential Tenancy Branch, which was not available to me at the time of the hearing on January 30, 2016. The female Landlord stated that this evidence was mailed to the Tenant on January 23, 2017, via registered mail. The Tenant stated that today he received notice from Canada Post that registered mail had been sent to him, but he has not yet picked up that mail.

On the basis of the testimony of both parties, I accept the female Landlord's testimony that her evidence package was mailed to the Tenant on January 23, 2017. On the basis of the undisputed testimony of the Tenant, I find that he received notification of the registered mail on January 30, 2017 and that he has not yet received the Landlord's evidence package.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure stipulates that documentary and digital evidence that is intended to be relied on at the hearing must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As the evidence shows that the Landlord's evidence package was not even mailed until one week before the hearing and that the Tenant has not yet received the Landlord's evidence, I find that it was not served in accordance with the Rules of Procedure.

In determining that the evidence should not be accepted, I find that the Landlord has failed to establish that there were exceptional circumstances that prevented him from serving and filing the evidence in accordance with the Rules of Procedure.

The Landlords were advised that they may testify regarding any document they have submitted in evidence. That Landlords were further advised that if, during the hearing, they deemed it essential for me to physically view a document they submitted they could request an adjournment to provide them with the opportunity to submit that specific document. The Landlords did not request an adjournment for the purposes of re-serving any specific document.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to comply with the *Act* or the tenancy agreement?

Background and Evidence

The Landlord and the Tenant agree that:

- the Tenant moved into the rental unit in 2013;
- in November of 2015 the Landlord, the Tenant, and two co-tenants signed a new tenancy agreement;
- the current rent of \$2,100.00 is due by the first day of each month; and
- on December 31, 2016 the male Landlord personally served the Tenant with a Two Month Notice to End Tenancy for a Landlord's Use of Property, which required the Tenants to vacate the rental unit on February 28, 2017.

The Tenant stated that he wants an assurance that the Landlord will comply with the requirement to compensate them in accordance with section 51(1) of the *Act*.

The Tenant stated that he also wants assurance that the Landlord will comply with her obligation to return the security deposit and with her obligation to use the rental unit for the purpose stated on the Application for Dispute Resolution. The Tenant was advised that these are issues that cannot be addressed at these proceedings, as they were not identified as issues in dispute on the Application for Dispute Resolution. The Tenant retains the right to file another Application for Dispute Resolution if the Landlord does not comply with these, or any other, obligation under the *Act*.

Analysis

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the notice to end tenancy an amount that is the equivalent of one month's rent payable under the tenancy agreement. On the basis of the undisputed evidence that the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property on December 31, 2016, I find that the Tenants are entitled to the equivalent of one month's rent, which is \$2,100.00.

Section 51(1.1) of the *Act* authorizes a tenant to withhold the last month's rent if the tenant is entitled to compensation pursuant to section 51(1) of the *Act*. As the parties were advised at the hearing, I find that the Tenants are not required to pay rent for the last month of this

tenancy, which is February of 2017. As this legal right is clearly establish by the legislation, I find there is no need to issue an Order in this regard.

As the Tenants opted to vacate the tenancy in accordance with the Two Month Notice to End Tenancy that was served, I find that they should not have filed an application to cancel that Notice to End Tenancy. As the Tenants are entitled to withhold rent for February of 2017 pursuant to section 51(1.1) of the *Act*, I find that the Tenants did not need to file an application requiring the Landlord to comply with the *Act*.

I find that the Tenants' did not need to file this Application for Dispute Resolution and that the hearing on January 30, 2017 was unnecessary. I therefore dismiss the Tenants' application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenants' application for an Order requiring the Landlord to comply with the Act or the tenancy agreement and their application to recover the filing fee is dismissed.

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 30, 2017

Residential Tenancy Branch