



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, RP, RR, FF, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlords' Use of Property (the 2 Month Notice) pursuant to section 66;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing.

Issues(s) to be Decided

Is the tenant entitled to have the 2 Month notice cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to conduct repairs to the suite or unit?

Is the tenant entitled to a rent reduction?

Is the tenant entitled to more time to file his application to dispute the notice?

Preliminary Issue

The tenant testified that he filed a separate application on December 14, 2016 to address some issues in regards to this tenancy with a hearing date of January 24, 2017. The tenant testified that he was served the 2 month notice to end tenancy on December 31, 2016. The tenant testified that he was informed it could be addressed at the January 24, 2017 hearing by a member of the staff at the Branch. The arbitrator at the time advised that the 2 month notice was not before him and that he could not address it and that the tenant was at liberty to file another application. The tenant testified that he was unclear and inexperienced in how to address the notice and therefore requests an extension of time to apply. After considering the tenants testimony and timeline of events and the unclear direction provided, I find that the tenant is entitled to the extension. The hearing proceeded and completed on that basis.

Background and Evidence

The rental unit is a two bedroom apartment. The tenant has lived in the building for over five years and in this apartment for two or three years. There is a written tenancy agreement but neither side had a copy handy during this hearing. The rent is \$1898.00 per month. The landlord holds a \$900.00 security deposit. The tenant testified that the unit lacked heat the required he and his roommate to purchase portable heaters. The tenant testified that as a result of the lack of heat and using these portable heaters their hydro bill was significantly higher than usual and seeks compensation for those costs. The tenant also seeks a rent reduction for some minor repairs he conducted in the suite. The tenant seeks a total monetary award of \$1000.44.

The tenant disputes the notice issued by the landlord. The tenant stated that he has requested to see the permits and approvals for the alleged renovations, but they have not been provided to him. The tenant testified that he has spoken to the contractor and was told that it would not be necessary to move out. The tenant testified that it would only be a minor "hiccup" and were more than willing to live through it as they enjoy living in this building. The tenant testified that he feels that the landlord is trying to "push him out".

The landlord gave the following testimony. The landlord testified that the building is undergoing a major re-piping and electrical upgrade and that the service to the tenants will be sporadically unavailable. The landlord testified that he believes the contractor to have all the necessary permits and approvals in his possession. The landlord testified

that the tenants were served on December 31, 2016 with a 2 Month Notice to End Tenancy for Landlords' Use of Property with and effective date of March 1, 2017 on the basis that *"The landlord has all necessary permits and approvals required by law to demolish the rental unit or renovate or repair the rental unit in a manner that requires the unit to be vacant"*. The landlord testified that the unit is required to be empty to conduct these repairs and requests an order of possession.

Analysis

When a landlord issues a notice to end tenancy under Section 49 of the Act, they bear the responsibility to provide sufficient evidence to support the issuance of that notice. The landlord issued the notice that on the basis that the unit need to be vacant to conduct the renovations. The tenant disputes this allegation. The landlord testified that he was "pretty sure" that the contractor had all the necessary permits and approvals to conduct the work. When the landlord gave testimony his testimony, he was unclear and unconvincing as to the scope of work and whether it really required the tenant to move out. The landlord did not provide any documentation in regards to the renovation; permits or otherwise. Based on the insufficient documentation and inconsistent testimony of the landlord, I hereby set aside the 2 Month Notice to End Tenancy for Landlords' Use of Property dated December 31, 2016.

I address the remainder of the tenants' application as follows:

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. The applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenants' testimony when explaining his monetary claim was very inconsistent and lacked clarity. The tenant often referred to his previous hearing and that he still wanted compensation for lack of heat and repairs. I have considered the tenants' monetary claim in its entirety I find that it is lacking the necessary details and clarity to be successful. The tenants' testimony was in direct contradiction to his documentation. In addition, the tenant failed to provide sufficient evidence to meet all four elements

required under Section 67 of the Act. Based on the insufficient documentation and inconsistent testimony from the tenant, I dismiss the monetary portion of his application.

The tenant did not provide sufficient evidence to support his request for a rent reduction or an order to have the landlord conduct repairs; accordingly, I dismiss that portion of his application.

Conclusion

The notice to end tenancy is set aside. The tenancy continues. The remainder of the tenants' application 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: February 23, 2017

Residential Tenancy Branch