



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

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; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67.

The landlord did not participate in the conference call hearing, which lasted approximately 15 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on January 11, 2017 he forwarded the tenant's application for dispute resolution hearing package via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application and supporting documents on January 16, 2017, the fifth day after their registered mailing.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

The landlord assumed this tenancy in August of 2015, when the landlord purchased the property from the former landlord. The tenant testified that this tenancy began with the former landlord in June of 2012 for a fixed term until May 31, 2019. Monthly rent in the current amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord assumed this deposit from the former landlord. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 2 Month Notice on December 28, 2016. The 2 Month Notice indicates the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant seeks to cancel the 2 Month Notice and seeks compensation in the amount of \$1,250.00. The tenant seeks the monetary award for the ongoing threat of eviction and the landlord's failure to comply with a previous arbitrator's repair order.

The tenant testified that this is the second 2 Month Notice he has received in six months. The last 2 Month Notice was addressed in a previous decision issued by the branch on August 29, 2016. The arbitrator in this hearing cancelled that 2 Month Notice and ordered the landlord to complete repairs by September 16, 2016. The arbitrator ordered the tenants to deduct \$200.00 from their monthly rent beginning on the first day of the following month until repairs are completed. For ease of reference, the file number for this hearing is set out on the front page of this decision.

Analysis

Section 49 of the *Act* provides that upon receipt of a 2 Month Notice the tenant may, within fifteen days; dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice within time, the landlord bears the burden to prove the grounds for the 2 Month Notice. Because the landlord did not attend the hearing I find he has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 2 Month Notice.

It is the tenant's position that the landlord has repeatedly breached his right to quiet enjoyment by issuing two 2 Month Notices and refusing to complete the repairs as ordered by the previous arbitrator. The tenant seeks compensation equivalent to one's month, specifically in the amount of \$1,250.00.

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

A breach of quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim.

To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Upon review of the evidence, I am not satisfied that two 2 Month Notices constitutes a breach to quiet enjoyment. Although this may be frustrating for the tenant, the landlord is at liberty to issue notices to end tenancy under the *Act*.

In relation to the tenants claim for compensation for the landlord's failure to conduct the repairs as previously ordered, I find I cannot change or vary a matter already heard and decided upon as I am bound by the earlier decision/settlement.

Therefore the portion of the tenants' application related to compensation for failure to conduct repairs is dismissed without leave to reapply. The order to deduct \$200.00 from monthly rent still stands.

Conclusion

The tenant's application to cancel the 2 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

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 03, 2017

Residential Tenancy Branch