Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate who primarily gave testimony (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. The tenant testified that she had not had the opportunity to retrieve the landlord's evidence package from the post office but confirmed she had received and reviewed all of the pieces of evidence contained in the package at an earlier date. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, the tenant's application and their respective evidence.

Preliminary Issue

At the outset of the hearing the tenant argued that this hearing was *res judicata*, that this matter has been heard at the earlier hearing under the file number on the first page and I do not have jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the Act.

The earlier hearing dealt with the tenant's application to cancel an earlier 1 Month Notice to End Tenancy for Cause (the "earlier 1 Month Notice") issued on August 3, 2016. That earlier 1 Month Notice was issued as the landlord alleged that the tenant had:

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord; and
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The tenant's current application was filed in response to a 1 Month Notice dated February 8, 2017 wherein the landlord gives the reason to end the tenancy as:

(i) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The parties agree that both 1 Month Notices arise out of an incident on July 25, 2016 (the "July incident"). The current 1 Month Notice was issued as the landlord claims the tenant has failed to pay the cost of repairs arising from the July incident, specifically reimbursing the landlord for the cost of replacing an oven in another rental unit. The landlord testified that a material term of the tenancy agreement provides that the tenant must take necessary steps to repair damages caused by the tenant or persons permitted onto the property by the tenant. The landlord submitted into written evidence a copy of an invoice from an appliance retailer for an oven that was purchased on July 26, 2016. The landlord said that the current 1 Month Notice was issued because the tenant failed to repay the cost of replacing an oven that was damaged in the July incident in a timely manner. The landlord argued that while the root cause of the damage is the July incident, the present 1 Month Notice is seeking to end the tenancy for the tenant's failure to pay an arrear on her account. The landlord's position is that the two 1 Month Notices are separate matters that should be adjudicated independently.

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. In her written decision the other arbitrator makes a finding that the July incident "was a one-time incident, the damage was not excessive or structural". I find that this is a conclusive finding of fact regarding the July incident. Therefore, I find that I do not have the jurisdiction to make a new finding nor could the landlord issue the current 1 Month Notice based on the same July incident after a conclusive finding has been made. When an arbitrator makes a conclusive finding regarding an incident it is not open for the landlord to claim additional damages flowing from the incited event. I find that this current application concerns a 1 Month Notice that has been issued based on the July incident, a matter that has already been conclusively decided and cannot be decided again.

The landlord's 1 Month Notice is cancelled as a conclusive order has already been issued in regards to the July incident. I find that there is insufficient evidence that the

tenant agreed to pay the costs of a replacing an oven in another rental unit to the landlord.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed.

The landlord's 1 Month Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I dismiss the landlord's claim against the tenant for the cost of replacing an oven in a rental unit.

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: March 16, 2017

Residential Tenancy Branch