

DECISION

Dispute Codes CNL FF MNDC O 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 ("2 Month Notice") pursuant to section 49;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72;
- a Monetary Order pursuant to section 67 of the *Act* for damages suffered; and
- more time to make an application to cancel a *Notice to End Tenancy* pursuant to section 66.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant provided an interpreter for the purposes of understanding the proceedings.

As both parties attended the hearing, I confirmed that there were no issues with service. I find that the tenant was served with the 2 Month Notice and the landlord's evidentiary package in accordance with section 88 of the *Act*, as the parties agreed that the landlord's 2 Month Notice and evidence were placed on the tenant's rental unit door on January 22, 2017. The parties confirmed that on January 30, 2017 the tenant personally served the tenant's notice of dispute resolution on the landlord along with her evidentiary package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application.

At the outset of the hearing, the tenant explained that she marked her application for dispute resolution form with the headings of 'Other' and 'More Time.' The tenant explained that English was her second language and therefore, did not fully comprehend these headings. The tenant stated that she was prepared for the hearing and did not need more time to make an application.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application?

Is the tenant entitled to a Monetary Order?

Background and Evidence

The landlord testified that this tenancy began on July 1, 2016 and rent was set at \$1,700.00 per month. A security deposit of \$850.00 continues to be held by the landlord. This was a fixed-term tenancy set to end on June 30, 2017.

On January 22, 2017 the landlord stated that she served the tenant with a 2 Month Notice because she had recently sold the house and the new owner was set to take possession on March 31, 2017. The landlord explained that the purchaser was aware that a tenant occupied the suite and the purchasers had informed the landlord they were content with current rental arrangement. The landlord continued by saying that the purchasers had recently changed their position on the matter and were now refusing to complete the purchase with the presence of a tenant.

The tenant explained she did not believe that the landlord was initially oblivious to the new owner's position concerning the tenancy. She sought a Monetary Order of \$17,750.00, reflecting expenses that she had incurred moving from Korea to Canada. Specifically, the tenant sought to recoup the expenses she had moving to the rental unit, moving costs that were anticipated for her vacating the apartment, rent that would be due in a new apartment as well as agent fees she would need to pay to find a new apartment. The tenant explained that as English her second language, she need to secure the help of an agent and translator to assist her with finding an apartment.

Cancellation of the 2 Month Notice

The tenant sought to cancel the landlord's 2 Month Notice on the basis that she had entered into a fixed-term tenancy agreement with the landlord in 2016 and that this agreement was not set to expire until June 30, 2017.

Section 49(2)(c) of the *Act* explains the circumstances that must exist for a landlord to be successful in their application for an Order of Possession when they have served the tenant with a 2 Month Notice and a fixed term tenancy is present.

This section notes, *a landlord may end a tenancy by giving notice to end the tenancy effective on a date that must be...if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.*

As both parties acknowledge that this was a fixed-term tenancy set to end on June 30, 2017, the landlord cannot serve the tenant with a 2 Month Notice. **The tenant was successful in obtaining a cancellation of the landlord's 2 Month Notice to End Tenancy.**

Analysis – Monetary Order

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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to a monetary award.

The tenant is seeking a Monetary Order of \$17,750.00. Specifically, the tenant stated that she was looking to recover funds associated with an anticipated move. Had the tenant been forced to move, the tenant would have faced numerous costs associated with moving, translation and agent fees. Since the tenant was successful in her application to cancel the landlord's 2 Month Notice, these issues are moot as the tenancy will continue until the conclusion of the fixed term tenancy on June 30, 2017.

The tenant has been unable to demonstrate any loss that has resulted from the tenancy. **Therefore, the tenant's application for a Monetary Order is dismissed.**

As the tenant was successful in her application to cancel the landlord's 2 Month Notice, she is entitled under section 72 of the *Act* to a return of the \$100.00 filing fee. Using the off-setting provisions contained in section 72(2) of the *Act*, the tenant may withhold \$100.00 from a future monthly rent payment.

Conclusion

The tenant is successful in her application to cancel the landlord's 2 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant's application for a Monetary Order is dismissed.

I order the tenant may withhold a total of \$100.00 from a future monthly rent payment.

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 1, 2017

Residential Tenancy Branch