



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, CNL, MNDC, OLC, RPP, MNSD, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- 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;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant, J.N. (the tenants) provided direct testimony that the landlord was served with the notice of hearing package in person on February 17, 2017. The landlord's agent (the landlord) confirmed receipt of the package as claimed by the tenants. The tenants stated that the landlord was served with the submitted documentary evidence via Canada Post Registered Mail on February 24, 2017 which was confirmed by the landlord. The landlord stated that the tenant was served with the submitted

documentary evidence by posting it to the rental unit door on March 7, 2017 which was confirmed by the tenants. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that the tenants have applied for a monetary order for money owed or compensation for damage or loss, for an order for the landlord to comply with the Act, for an order for the landlord return personal property. As these sections of the tenant’s application are unrelated to the main section which is to cancel the notice to end tenancy issued for cause and unpaid rent, I dismiss these sections of the tenants’ claim with leave to reapply.

The tenants also confirmed during lengthy discussions that they are not seeking a return of the security deposit. As such, this portion shall be removed as it was added in error administratively.

After lengthy discussions, the landlord confirmed that he was cancelling the 1 Month Notice dated January 27, 2017 and the 10 Day Notice dated February 6, 2017. The landlord also clarified that he was cancelling the 2 Month Notice to End Tenancy issued for Landlord’s Use of Property dated February 16, 2017 as it was incorrectly served. As such, both parties acknowledged and confirmed that the hearing shall continue on the tenants’ application to cancel the 2 Month Notice to End Tenancy issued for Landlord’s Use of Property (the 2 Month Notice) dated February 17, 2017 and if successful the recovery of the filing fee.

This matter was set for a reconvened conference call hearing on April 21, 2017 at 9:00 a.m. The tenants attended and provided undisputed affirmed testimony. The landlord did not attend. I waited until 14 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the landlord and in the absence of the landlord's participation in this hearing, I order the tenants' application to cancel the 2 Month Notice dated February 17, 2017 granted. The 2 Month Notice dated February 17, 2017 is set aside and the tenancy shall continue.

The tenants having been successful are entitled to recovery of the \$100.00 filing fee. As the tenancy is continuing, I authorize the tenants to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

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: April 21, 2017

Residential Tenancy Branch