



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC ERP MNSD OLC RP FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated June 14, 2017 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated June 13, 2017, with an effective date of July 31, 2017 (the "One Month Notice");
- an order requiring the Landlord to make emergency repairs for health of safety reasons;
- an order that the Landlord pay the security deposit or pet damage deposit to the Tenant;
- an order that the Landlord comply with the *Act*, regulation and/or the tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenant testified the Application package was served on the Landlord by registered mail on July 16, 2017. The Application package was sent to the Landlord's address for service as provided on the tenancy agreement, a copy of which was submitted into evidence by the Tenant. A Canada Post registered mail receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Landlord is deemed to have received the Tenant's Application package on July 21, 2017. The Landlord did not submit any documentary evidence in response to the Tenant's Application.

The Tenant was provided an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. The Tenant acknowledged during the hearing that this was the main issue to be addressed. Accordingly, after some discussion with the Tenant about the Application, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request to cancel the One Month Notice and to recover the filing fee paid to make the Application. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as necessary.

A landlord bears the burden of proving they have sufficient justification for issuing a notice to end tenancy. In this case, although deemed to have been served with the Tenant's Application package, the Landlord did not attend the hearing. I find there is insufficient evidence before me in support of ending the tenancy. Accordingly, I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

As the Tenant has been successful, I find she is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment.

In addition, I remind the parties of their rights and obligations to repair and maintain residential property under section 32 of the *Act*, which states:

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) A tenant is not required to make repairs for reasonable wear and tear.*
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

[Reproduced as written.]

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

As the Tenant's Application was successful, I order that the Tenant may deduct \$100.00 from a future 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: August 11, 2017

Residential Tenancy Branch