



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FF

Introduction

Only the tenant attended the hearing and gave sworn testimony. She confirmed the Notice to End Tenancy dated June 18, 2017 to be effective August 20, 2017 was served personally. The effective date on the Notice is automatically corrected to August 31, 2017 pursuant to section 53 of the *Residential Tenancy Act* as a Notice to End Tenancy for landlord's use of the property must give a full two months' notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on June 30, 2017 and the landlord became very angry when she gave it to him. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. Very limited documentary evidence was provided and the applicant had some trouble remembering dates as she said she was sick. She said she had lived in the unit about 5 years, rent is \$725 a month and a security deposit of \$362.50 was paid. The landlord served a Notice to End Tenancy for his own use of the property stating that he or a close family member would occupy the unit.

The tenant said she vacated on August 15, 2017 because the landlord was making things very difficult for her by making a lot of noise and banging. Both parties live in the same home in separate units. She said she got no free month's rent and the landlord kept her security deposit, saying it was for half a month's rent in August. She paid July rent in full but not August.

Included with the evidence is a copy of the Notice to End Tenancy. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

The onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. However, in this case it is moot as the tenant chose to vacate on August 15, 2017.

Section 51 of the Act provides that a tenant who receives a notice to end tenancy under section 49 (landlord's use of the property) is entitled to receive on or before the effective date of the Notice the equivalent of one month's rent. According to section 51(1.1) the tenant may withhold the amount from the last month's rent and that amount is deemed to have been paid to the landlord. I find the evidence is that the tenant did not pay rent for August 2017 but under section 51(1.1) she is deemed to have paid it to the landlord. Therefore I find the landlord is not entitled to rent for August and he has no authority to keep the tenant's security deposit.

However, the tenant said she had provided no forwarding address to the landlord because she was frightened. I find under section 38 of the Act, the landlord has 15 days from the later of the tenant vacating and providing her forwarding address in writing to either return the deposit or file an application to claim against it. I advised the tenant that she should immediately supply a forwarding address for the return of the security deposit and this could be a friend's address as she currently has no place.

For the above reasons, I dismiss the application of the tenant and give her leave to reapply for the return of her security deposit after she complies with the requirements of section 38 of the Act.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. She has vacated already and no Order of Possession is necessary. I find she is deemed to have paid her August rent to the landlord and is entitled to the refund of her security deposit after she complies with section 38 of the Act.

I give her leave to reapply for the refund of her security deposit.

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: September 12, 2017

Residential Tenancy Branch