



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNDC, MNSD, FF

Introduction

On September 4, 2017, the Tenants submitted an Application for Dispute Resolution requesting the following:

- to cancel a 1 Month Notice to End Tenancy for Cause dated August 31, 2017.
- to set conditions on the Landlord's right to enter the rental unit.
- For a monetary order for money owed or compensation for damage or loss.
- For the return of the security deposit and/or pet damage deposit.
- to recover the filing fee for the Application.

The matter was set for a conference call hearing. The Tenant and Landlord appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

Rule 4.1 and 4.6 of the Residential Tenancy Branch (RTB) Rules of Procedure permits an applicant to amend a claim by completing an amendment to an application for dispute resolution form and filing the completed form with the RTB. The applicant is also required to serve a copy of the amended application to each respondent.

The Tenants initial application indicates they are seeking compensation in the amount of \$2,700.00. Prior to the hearing, the Tenants submitted additional documentary evidence increasing the amount of the monetary claim to \$8,132.19. The Tenants submitted further documentary evidence indicating the monetary claim was further amended to \$11,832.19.

The Tenants also applied online for another hearing that is scheduled in May 2018, and in that application, which appears to be for the same issues, they are seeking compensation in the amount of \$6,828.00.

I find that the amount of the compensation that the Tenants are seeking is unclear. It appears the Tenants may not have amended their monetary claim in accordance with the RTB Rules of Procedure.

The Landlord also submitted documentary evidence indicating she was cross applying for compensation against the Tenant. Rule 2.11 and 2.13 states that to respond to an existing application, respondents may file a cross application by filing their own application for dispute resolution. A cross application has been made when it has been submitted to the RTB and the fee has been paid or waived. The applicant must also serve the respondent with a copy of the application and evidence not less than 14 days before the hearing.

I find that the Landlord did not file a cross application in accordance with the RTB Rules of Procedure.

Arbitrators have discretion to dismiss unrelated claims with or without leave to reapply. The Tenant applied for dispute resolution in response to receiving a 1 Month Notice To End Tenancy For Cause. The Tenant is seeking to cancel the notice to end tenancy and is also seeking compensation.

I find that the primary issue to be determined is whether the tenancy will continue. I dismiss the Tenant's other monetary claims to be heard at the May 2018, hearing. If the Tenants wish to amend the amount of compensation they are seeking they must follow the rules of procedure regarding the amendment of their application.

The Landlord may file an application for dispute resolution and request that the hearing be joined with the Tenant's application scheduled for May 8, 2018.

Issues to be Decided

- Is there Cause to end the tenancy based on the 1 Month Notice to End Tenancy for Cause dated July 25, 2016?

Background and Evidence

The parties testified that the tenancy began on August 1, 2017 as a one year fixed term tenancy.

Both parties testified that Rent in the amount of \$2,700.00 per month is to be paid to the Landlord and that the Tenant paid a \$1,350.00 security deposit and \$1350.00 pet damage deposit to the Landlord.

The Tenants testified that they received a 1 Month Notice To End Tenancy For Cause dated August 31, 2017, with an effective date of September 30, 2017.

The Tenants disputed the 1 Month Notice by applying for Dispute Resolution within the required timeframes.

The Tenants testified that they moved out of the rental unit on September 30, 2017.

The Landlord testified that she is still holding the security deposit and pet damage deposit.

Analysis

Section 44 of the Act provides that:

A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
- (ii) section 46 [landlord's notice: non-payment of rent];
- (iii) section 47 [landlord's notice: cause];
- (iv) section 48 [landlord's notice: end of employment];
- (v) section 49 [landlord's notice: landlord's use of property];
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
- (vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenancy ended on September 30, 2017, when the Tenants vacated the rental unit prior to having the dispute regarding the 1 Month Notice heard.

Since the tenancy has already ended, the Tenant's application to cancel the 1 Month Notice To End Tenancy For Cause is dismissed.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants moved out of the rental unit prior to the hearing, the merits of the 1 Month Notice were not considered. I therefore decline an award to the Tenants to recover the cost of the filing fee.

The Tenants have leave to pursue their monetary claims at the hearing that is scheduled in May 2018.

The Landlord may cross apply for dispute resolution to be heard at the May 2018 hearing.

Conclusion

The tenancy ended when the Tenants moved out of the rental unit on September 30, 2017. The Tenant's application to cancel the 1 Month Notice is dismissed.

The Tenants have leave to pursue their monetary claims at the hearing that is scheduled in May 2018.

The Landlord may cross apply for dispute resolution to be heard at the May 2018 hearing.

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: November 27, 2017

Residential Tenancy Branch