



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RR, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated September 18, 2017 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 22 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she served the landlord with her application for dispute resolution hearing package on October 6, 2017, by way of registered mail. The tenant provided a Canada Post receipt and tracking number with her application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was deemed served with the tenant's application on October 11, 2017, five days after its registered mailing.

The tenant testified that she received the landlord's 2 Month Notice on September 21, 2017, by way of posting to her rental unit door. On the first page of the 2 Month Notice, the landlord indicated that the notice was served to the tenant on September 20, 2017, by way of posting to her rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on September 21, 2017.

At the outset of the hearing, the tenant requested that an administrative penalty, pursuant to section 94.1 of the *Act*, be levied against the landlord. I informed the tenant that I did not have the authority to administer administrative penalties against the landlord, only the Director of the Residential Tenancy Branch ("RTB") does. I notified the tenant that she could apply for such a penalty through the required procedure as outlined in the *Act*. Accordingly, the tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed with leave to reapply.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

Is the tenant entitled to an order to allow her to reduce rent for repairs, services or facilities agreed upon but not provided?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on December 1, 2013. Monthly rent in the current amount of \$1,749.90 is payable on the first day of each month, as per the latest Notice of Rent Increase issued to the tenant and effective on December 1, 2017. A security deposit of \$800.00 and a pet damage deposit of \$500.00 were paid by the tenant and the landlord continues to retain both deposits. The tenant continues to reside in the rental unit.

The tenant provided a copy of the 2 Month Notice, which indicates an effective move-out date of November 30, 2017. The reason identified on the notice is:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant applied for a \$3,375.00 rent reduction, which she said is equivalent to two months of rent at the former rent of \$1,687.50, before it was increased to \$1,749.90. She claimed that she has appeared at six hearings, including this current hearing, at the RTB for repair requests and six notices of eviction issued by the landlord, all of which have been successful for the tenant. The file numbers for the previous hearings appear on the front page of this decision. The tenant claimed that being awarded the filing fee at the previous hearings has not stopped or deterred the landlord from continuing to issue harassing notices of eviction for the same reasons, all of which have been unsuccessful. The tenant said that the landlord has made multiple attempts to evict her, has assaulted her and caused her stress and emotional damage, and the tenant provided digital and documentary evidence of this.

Analysis

2 Month Notice

In accordance with section 49(8) of the *Act*, the tenant must file her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant received the 2 Month Notice on September 21, 2017 and filed her application to dispute it on September 29, 2017. Accordingly, I find that the tenant's application was filed within the fifteen day limit under the *Act*.

Where a tenant applies to dispute a 2 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 2 Month Notice is based. The landlord did not show up at this hearing in order to make any submissions.

Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated September 18, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Monetary Claim

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

RTB Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment:

- 28** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
- (a) reasonable privacy;*
 - (b) freedom from unreasonable disturbance;*
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
 - (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

I award the tenant \$500.00 in nominal damages for a loss of quiet enjoyment while living at the rental unit. I find that this is a reasonable amount, particularly given the fact that in previous hearings the tenant was granted the filing fees as the successful party and the landlord was not deterred by this compensation and continued to issue at least six meritless and unsuccessful notices of eviction against the tenant.

I find that the tenant disputed all notices successfully, appearing at six RTB hearings in August 2015, November 2015, March 2016, August 2017 and now December 2017. I presided over three of the six hearings, including the hearings in August 2015, August 2017 and December 2017, where the tenant was successful. I find that the landlord's behavior of issuing multiple meritless notices of eviction, causing the tenant to dispute the notices, and failing to show up at RTB hearings such as this current hearing, to be a breach of the tenant's right to quiet enjoyment. At the previous hearing in August 2017, I found that the landlord issued a 2 Month Notice in bad faith and that it was issued for the same reason as was decided at a previous hearing on March 23, 2016. I find that the landlord issued multiple 2 Month Notices for different family members to move in, all of which were cancelled and found to be without merit. The landlord also issued multiple 10 Day Notices for Unpaid Rent or Utilities and 1 Month Notices for Cause against the tenant, that were unsuccessful.

As the tenant was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated September 18, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$600.00 from future rent payable to the landlord for this tenancy at the rental unit in full satisfaction of the monetary award made at this hearing.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed with leave to reapply.

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: December 28, 2017

Residential Tenancy Branch