



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC CNL MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on October 10, 2017, and amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on October 12, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 30, 2017 (the "Two Month Notice");
- an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement.

The Tenant attended the hearing on her own behalf and was accompanied by her legal advocate, K.R. The Landlord attended the hearing on his own behalf and was assisted by an agent, M.B. Both parties provided a solemn affirmation.

The Tenant testified the Application package was served on the Landlord, in person, on October 13, 2017. The Landlord confirmed receipt. In addition, the Tenant testified the Amendment to an Application for Dispute Resolution was served on the Landlord by registered mail. The Landlord confirmed receipt of these documents. Pursuant to section 71 of the *Act*, I find the Landlord was sufficiently served with these documents for the purposes of the *Act*. The Landlord did not submit documentary evidence in response to the Application.

No issues were raised with respect to service or receipt of the above documents. The parties were given a full opportunity to present evidence orally and in written and documentary form, and to 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 and Procedural Matters

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. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request to cancel the Two Month Notice. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Issue to be Decided

Is the Tenant entitled to an order cancelling a Two Month Notice?

Background and Evidence

The Landlord confirmed he purchased the property in June 2017, and took possession on July 1, 2017. However, the Tenant testified the tenancy began on June 1, 2010. Currently, rent is due in the amount of \$950.00 per month. The Tenant testified she paid a security deposit of \$275.00 at the beginning of the tenancy.

The Tenant confirmed receipt of the Two Month Notice on October 2, 2017. The Two Month Notice was issued on the following basis:

The landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

[Reproduced as written.]

Specifically, the Landlord testified that he intends to perform a number of repairs to the rental unit, but that permits and approvals are not required. He advised that he intends to sand and repaint the walls, which have been damaged by the Tenant's wheelchair. The Landlord also advised of his intention to replace bathroom and kitchen fixtures. He testified the bathroom sink was removed by the Tenant. The Landlord indicated these repairs are required to address the condition of the rental property, and to address the smell of cigarette smoke.

The Tenant testified she has always been permitted to smoke in the rental property, and that it has not been repainted in seven years. Further, the Tenant testified that the sink in the bathroom was removed with the previous owner's permission to facilitate transfers into and out of her wheelchair.

In addition, the Tenant testified to her belief that the Two Month Notice was not issued in good faith. She raised concerns about the payment of utilities, and because of a rent increase proposed by the Landlord. The Landlord disputed this aspect of the Tenant's testimony.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to end a tenancy when the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The Tenant confirmed, and I find, that she received the Two Month Notice on October 2, 2017.

The Landlord did not submit any documentary evidence. Rather, he testified that he wishes to make a number of repairs to the rental property, summarized above, which do not require permits or approvals. However, after careful consideration of the oral testimony and documentary evidence referred to during the hearing, I find there is insufficient evidence before me to conclude the Landlord requires the rental property to be vacant in order to complete the proposed repairs. Accordingly, I order that the Two Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

As noted under *Preliminary and Procedural Matters* above, the Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Conclusion

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

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 20, 2017

Residential Tenancy Branch