



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Where a notice to end tenancy has been cancelled, does that notice remain alive to dispute?

Background and Evidence

The following are agreed facts: The tenancy started in August 2010 and ended on November 30, 2016. Rent of \$2,890.45 was payable monthly. On August 31, 2016, the Landlord gave the Tenant a two month notice to end tenancy for landlord’s use (the “Notice”). The reason stated on the Notice was that the Landlord or a close family member of the Landlord intended to move into the unit. The effective date stated on the Notice was October 31, 2016. The daughter of the Landlord was to move into the unit after renovations were done. The unit was old and needed major upgrading. The Tenant disputed the Notice and the Parties entered into a mutual agreement at the

hearing that, inter alia, the tenancy would end on November 30, 2016 and that the Notice was “cancelled and of no force or effect”. The mutual agreement was recorded in the Decision dated November 3, 2016 and this Decision sets out that both Parties understood and agreed to the terms of the mutual agreement.

The Tenant states that the unit has been vacant and no person has moved into the unit since the end of the tenancy. The Tenant argues that even though the Parties agreed to cancel the Notice during the hearing, the Tenant thought that the cancellation was only in relation to the Tenant’s ability to reside in the unit past the effective date of the Notice and that the Notice should otherwise still be effective.

The Landlord states that the unit has been vacant as they discovered that the house was not habitable without major renovations that required permits. The Landlord states that the permits are expected to be issued this week and that it is still the intention of the Landlord's daughter to move into the unit after the renovations are complete. The Landlord argues that as the Notice was cancelled it would have “no force and effect” in relation to any future disputes involving the Notice. The Landlord states that at the previous hearing the Parties were questioned very clearly by the arbitrator about understanding the terms of the mutual agreement.

Analysis

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy for landlord’s use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51(2) of the Act provides that, in addition to this compensation, if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement. Section 77(3) of the Act provides that a decision is final and binding on the parties.

There is no dispute that in the previous hearing the Parties mutually agreed to cancel the Notice. The Decision for that hearing records that agreement and sets out that the Parties understood the terms of the mutual agreement, including the term that the Notice was of no effect or force. While it may be that the Tenant's understanding of the agreed cancellation was only in relation to the effective date for the Tenant to move out of the unit and that the agreement was made without the Tenant's understanding that it was also giving up future rights in relation to the stated reasons for the Notice, given the final and binding nature of the Decision I have no authority to change that Decision.

As the Notice was cancelled and of no force or effect I find that the Notice did not operate to end the tenancy for any effective date or for any reason and that there is now no basis upon which the Tenant may seek compensation under the Act. I therefore dismiss the claim. As the Tenant's claim has not had success I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed. 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: January 26, 2018

Residential Tenancy Branch