



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, RP, MNDC, OPC, MNDC, FF

Introduction

In the first application the tenant Ms. H.M. (it appears that the applicant Ms. K.M. is not a tenant but merely an occupant) seeks to cancel a one month Notice to End Tenancy for cause. She has not filed a copy of the Notice in question, however the landlord has filed a one month Notice dated December 6, 2017 and so I infer it is that Notice the tenant seeks to cancel. The tenant also seeks a repair order and a monetary award relating to the lack of repair.

In the second application the landlord seeks an order of possession pursuant to the Notice and a monetary award for the cost of the repair of a shower handle/valve.

At the start of the hearing it was determine that the tenant's claim for a repair order and monetary award were unrelated to her claim for cancellation of the Notice, a claim for which an early hearing date was given by the Residential Tenancy Branch. Similarly, the landlord's monetary claim is unrelated to its claim for an order of possession, again, a claim for which priority was given.

The Rules of Procedure direct that parties not bring unrelated claims and that an arbitrator may sever and dismiss unrelated claims. I exercise that authority and dismiss the tenant's claims for a repair order and a monetary award, with leave to re-apply. I dismiss the landlord's claim for a monetary award with leave to re-apply.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenancy ended as a result of the landlord's Notice to End Tenancy?

Background and Evidence

The rental unit is a two bedroom apartment in an eight unit, two floor building in a complex of eleven other residential buildings.

There is a written tenancy agreement though it was not presented by either party. The tenancy started in March 2015. The current monthly rent, after a recent increase, is \$902.00, due on the first of each month. The landlord holds a \$425.00 security deposit and a \$425.00 pet damage deposit.

The tenant has not served her application on the landlord. When queried she indicated a series of confusing communications with persons at the Residential Tenancy Branch regarding the withdrawal of her application.

At the discovery of this fact, the hearing was abridged for the reasons below.

Analysis

Section 47 subsections (4) and (5) of the *Residential Tenancy Act* (the "Act") provide:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

By not serving the landlord with her application the tenant has not completed the application process. She has not fully “made an application” within the meaning ascribed to it by subsections (4) and (5), above.

As a result subsection (5) is operable and this tenancy has been ended by the Notice. The Notice issued by the landlord gives an effective date of January 15, 2018 to end the tenancy. That date is too early. Given that the rental period for this tenancy runs from the first to the last day of each calendar month, s. 47(2) of the *Act* determines that the earliest effective date for the Notice, given in December, would be the last day of January.

Section 53 of the *Act* specifies that the Notice is automatically corrected to the proper date. As a result I find that this tenancy ends on January 31, 2018. The landlord will have an order of possession for then.

Conclusion

The landlord’s application for an order of possession is allowed. It is also entitled to recover the \$100.00 filing fee for this application and I authorize it to recover the amount of \$100.00 from the security deposit it holds, in complete satisfaction of the fee.

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 16, 2018

Residential Tenancy Branch