



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding NAM WAH TONG HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC OPC MNDCT FF

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The One Month Notice to End Tenancy is dated December 9, 2017 to be effective January 31, 2018 and the tenant confirmed it was served by registered mail. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated December 18, 2017 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) For compensation for damages (\$25,000);
- c) To protect their peaceful enjoyment pursuant to section 28; and
- d) To recover filing fees for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Is the tenant entitled to compensation as claimed and an order to protect their peaceful enjoyment?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. At the outset of the hearing, the lawyer for the landlord said the landlord was withdrawing the Notice to End Tenancy for cause and the tenancy could continue. He was retained only one week ago and needs time to prepare the evidence to respond to the tenant's claims. In response to the tenant's question, he said that there was no intention at the present time to serve another Notice to End Tenancy. There may be some notices to all the tenants from the landlord regarding the situation in the building.

As the tenancy is at present secure and the tenant's request for compensation is based on incidents from long ago, he said it would not prejudice the tenant to have his application for damages heard later after both parties have assembled their evidence. I suggested the possibility of a settlement but the lawyer said he would need to discuss this with his client in some detail. It may be possible. I gave some suggestions to the tenant regarding filing sufficient evidence to support his claims.

Analysis:

I find the primary issue in this application is the security of the tenancy. Losing one's home is serious, especially since according to the tenant's evidence, the tenant and his pet cat have found the unit and building suits them well. As the landlord has withdrawn the Notice to End Tenancy dated December 9, 2017, I hereby cancel it. The tenancy is continued. I find Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provide that the arbitrator may dismiss with or without leave to reapply an unrelated dispute in a single application if they find it is appropriate to do so.

I find it fair and appropriate to dismiss the tenant's application for damages with leave to reapply to allow the landlord time to respond. Although the tenant was concerned at the landlord retaining a lawyer at the last minute, I find this practice is not uncommon. Furthermore, the tenant's claims are old and as I told him, would even survive the end of the tenancy for two years pursuant to the limitation period. Due to his expressed concern, I told him that if he filed another application for damages and the landlord subsequently served a Notice to End Tenancy, he could file an amendment to his Application before the hearing to cancel the Notice.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy dated December 9, 2017 is successful as the landlord is not pursuing the Notice. The tenancy is continued. I give the tenant leave to reapply for damages. I find the tenant entitled to recover his filing fee for this Application.

I HEREBY ORDER that the tenant may recover his filing fee by deducting \$100 from his rent.

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: February 21, 2018

Residential Tenancy Branch