



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL MNDC FF

Introduction

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated January 31, 2018 to be effective April 30, 2018 was served by registered mail. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated February 7, 2018 by registered mail also and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act 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 landlord's use of the property pursuant to section 49;
- b) To dispute an additional rent increase;
- c) To claim compensation per amendment filed and served; and
- d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to have the property for their own use? 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?

Has the tenant proved on a balance of probabilities that they had an illegal rent increase and they are entitled to other compensation?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 1, 2016 on successive 6 month terms, it is now a month to month tenancy, rent is \$1200 a month and a security deposit of \$600 was paid. The landlord served a Notice to End Tenancy for the following reasons:

Section 49 (6): The landlord intends in good faith to (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord testified that she has a number of properties and she is finding it too difficult to manage them with all the legal requirements of 3 month notices of rent increases, property inspections, maintenance etc. She has arranged for a very competent person she knows to take over the properties. The prospective manager has given notice at her other residence and is hoping to move into this unit by May 1, 2018.

The tenant questioned the good faith of the landlord for the Notice was served shortly after she had a negotiation with the landlord about a rent increase. Initially she and her friend agreed to rent the unit at \$1400 a month for they wanted to remain close to work. They signed a new lease but the following day they regretted it and informed the landlord who told them to tear up the lease and it was void as far as she was concerned. The landlord said that was part of how she realized she was not managing things properly as she had served no notices of rent increase for the past two years. However, she reiterated that she realized she needed help and hired this manager. No money was paid under the new lease.

The tenant claims compensation of \$479.94 for fixtures she installed. She also pleaded for more time to move. The parties discussed the situation and voluntarily arrived at the following settlement agreement.

Settlement Agreement:

- 1. The landlord will pay the tenant \$347.94 for fixtures but nothing for labour.**
- 2. The tenant may remove the new dishwasher she installed but must replace it with a good used one as this was the original state of the unit and the landlord did not consent to the installation of the new dishwasher.**
- 3. The landlord will receive an Order of Possession effective May 31, 2018.**
- 4. The tenant will pay rent for April 2018 and will receive free rent for May pursuant to the section 49 Notice and section 51 compensation for it.**
- 5. The tenant will provide written confirmation to the landlord that she will vacate on May 31, 2018 pursuant to the Order of Possession.**

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause pursuant to section 49 to evict the tenant. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to her need for help in managing her properties and her arrangement to have a caretaker live in the tenant's suite. Although the tenant questioned the timing of the landlord in issuing the notice, I find the landlord issued the Notice in good faith and accept her evidence that the negotiations with the tenant helped her realize that she needed help to manage her properties.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on April 30, 2018. Pursuant to section 55 of the act and the Settlement Agreement, I find the landlord entitled to an Order of Possession effective May 31, 2018.

Pursuant to the settlement agreement, I find the tenant entitled to a monetary order for \$347.94.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. An Order of Possession is issued to the landlord effective May 31, 2018. I find the tenant entitled to a monetary order for \$347.94 as agreed and to recover half her filing fee (\$50) due to her partial success. The tenant is issued a monetary order totalling \$397.94.

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: April 11, 2018

Residential Tenancy Branch