



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNL, FFT
 OPL, FFL

Introduction

On September 30, 2017, the Tenants filed an Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act"), seeking cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") and recovery of the filing fee. A hearing was subsequently scheduled to hear the matter on December 13, 2017, at 11:00 A.M.

On December 5, 2017, the Landlord filed an Application under the *Act* seeking an Order of Possession based on the Two Month Notice and recovery of the filing fee. A hearing was subsequently scheduled to hear this matter before me on February 20, 2018, at 11:00 A.M.

On December 13, 2017, the hearing of the Tenants' Application commenced with a different arbitrator, who, without being seized of the matter, adjourned the Tenant's Application and ordered that it be heard at the same time as the Landlord's Application, which was set for hearing before me on February 20, 2018, at 11:00 A.M.

On February 20, 2018, I heard the Applications from both parties and on March 19, 2018, I rendered a decision in favor of the Landlord granting the Landlord an Order of Possession effective at 1:00 P.M. on April 30, 2018, and a Monetary Order in the amount of \$100.00 for recovery of the filing fee.

The Tenants subsequently filed an Application for Review Consideration on March 26, 2018, and a decision was rendered by a different arbitrator in favor of the Applicant on March 29, 2018. In that decision the arbitrator ordered that a review hearing of the original Applications take place before me to address the limited issue of the strata council approval of the proposed renovations, which were the basis for serving the Two Month Notice and ending the tenancy. The arbitrator also suspended the decision and orders rendered by me on March 29, 2018, pending the outcome of this Review Hearing.

For the sake of brevity I will not repeat here the evidence summarized or the findings of fact made in the above noted previous decisions. As a result, the Interim decision dated January 10, 2018, my original decision and orders dated March 19, 2018, and the review consideration decision dated March 29, 2018, should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call at 11:00 A.M. on June 5, 2018, and was attended by the Landlord and the Tenant D.K., both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them at the e-mail addresses provided in their Applications.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I advised the parties that the purpose of the reconvened hearing was to hear matters only in relation to the issue of strata council approval of the proposed renovations. I also advised the parties that in my decision I would confirm, vary, or set aside the original decision and orders dated March 19, 2018.

Preliminary Matter #2

The Tenant testified that the documentary evidence she submitted for consideration in this limited review hearing was sent to the Landlord by registered mail on May 20, 2018, and provided me with the registered mail tracking number. The Tenant stated that the registered mail was signed for on May 23, 2018, and while the Landlord stated that his neighbour actually signed for and accepted the registered mail, he acknowledged receiving it on May 23, 2018. As a result, I accepted the Tenant's documentary evidence for consideration in this matter.

The Landlord testified that the documentary evidence he submitted for consideration in this limited review hearing was personally served on the tenant L.K. on April 18, 2018. Although D.K. disputed that this documentary evidence was received, L.K. did not appear at the hearing to provide any testimony for my consideration. The Landlord also did not provide any documentary evidence or call any witnesses in support of his testimony.

The Rules of Procedure state that each party must be prepared in the hearing to demonstrate to the satisfaction of the arbitrator that the other party was served with all of their evidence as required by the *Act* and the Rules of Procedure.

Although the Landlord testified that he served his evidence on one of the tenants who was not present in the hearing, he did not submit any documentary evidence or call any witnesses in

support of this testimony. Further to this, the Tenant who was present in the hearing denied having received this evidence from the Landlord. Based on the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the he served the documentary evidence he submitted to the Residential Tenancy Branch (the “Branch”) on the Tenants as required by the *Act* and the Rules of Procedure.

Rule 3.17 of the Rules of Procedure states that the arbitrator has the discretion to accept documentary or digital evidence not served in accordance with the *Act* or the Rules of Procedure provided they are satisfied that it is new and relevant evidence and the acceptance of the late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. All of the evidence from the Landlord is either dated in early 2017, or is part of a standard form which would be regularly available to the general public. As a result, I find that the Landlord’s evidence could have been served on the Tenants in compliance with the *Act* and the Rules of Procedure in advance of the hearing and is therefore not new and relevant evidence. Further to this, the ability to know the case against you and prepare evidence in your defence is fundamental to the dispute resolution process. As a result, I find that it would be unreasonably prejudicial to the Tenants and a breach of natural justice to accept this evidence for consideration, given that the Tenants have not had an opportunity to review, consider, and respond to it.

Based on the above, the documentary evidence submitted to the Branch by the Landlord for consideration in this limited review hearing was therefore excluded from consideration in this matter.

Preliminary Matter #3

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the “Branch”) under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Does the Landlord have strata council approval for the proposed renovations?

Background and Evidence

While both parties provided a significant amount of testimony in the hearing, I have only referred to the documentary evidence and testimony provided by them which is relevant to my decision and findings of fact and law.

The Landlord testified that he has had approval for his renovations since May 10, 2017, as this approval was required to obtain the building permits he submitted for consideration in the previous hearing. Although the Landlord stated that he has e-mail correspondence and a letter

regarding this approval from the property manager P.S., copies of this letter and correspondence were not before me for consideration. However, e-mail correspondence submitted by the Tenant refers to this approval.

The Tenant testified that although the previous property manager P.S. appears to have granted the Landlord approval for his renovations at some point, P.S. never had permission from the strata council to grant this approval. Further to this, the Tenant stated that P.S. is no longer employed by the strata council.

The Tenant submitted a series of e-mails between May 3, 2017, and August 24, 2017, which include the Landlord's original e-mail to P.S. requesting approval for his planned renovations, a request for approval from P.S. to the strata council members, and responses from the strata council members regarding concerns, requests for further information, and the lack of strata council approval for the proposed renovations. The Tenant also provided Strata Council meeting minutes for June 12, 2017, and August 3, 2017, in which concerns regarding the proposed renovations and the requests for further information regarding the renovations are documented. Further to this, the Tenant provided an e-mail dated March 22, 2018, from her to the current property manager N.S. requesting a letter on the issue of whether or not the Landlord has received strata approval for the renovations and a copy of a letter dated March 23, 2018, from the current property manager to the Landlord advising him that he does not yet have strata approval for his renovations.

The Landlord acknowledged receipt of this letter from N.S. but testified that the Tenant is intentionally belabouring the process and inappropriately using her position on the strata council to delay her eviction. The Landlord stated that he has since spoken with N.S., who was not aware that the Tenant is also a member of the strata council, and he has since received approval for his proposed renovations. No documentary or other evidence was submitted for my consideration in support of this testimony. Further to this, the Landlord stated that he has not been able to comply with the strata council's request for information, such as information and samples of the sound proof underlay he intends to use as part of the renovation, as he has been unable to start his renovations to date.

Both parties also agreed that as a result of the Monetary Order issued in favor of the Landlord on March 19, 2018, the Tenants paid the Landlord \$100.00 for the recovery of his filing fee.

Analysis

The ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the *Act* to issue the notice. Having carefully reviewed the evidence before me from both parties, I find that for the following reasons the Landlord has failed to establish, on a balance of probabilities, that they had cause to end the tenancy under section 47 of the *Act*.

Based on the testimony of both parties and the documentary evidence before me for consideration, I accept that the Landlord received approval from the previous property manager P.S. to go ahead with renovations on or about May 10, 2017. However, there is significant documentary evidence before me from the Tenant that P.S. did not have permission from the strata council to grant this approval, that strata council approval was never obtained, that the strata council directed P.S. to obtain more information from the Landlord regarding his renovations on several occasions prior to the issuance of the Two Month Notice, and that no such documentation was ever received. Further to this, although the Landlord testified that he has current strata council approval for his proposed renovations, there was no evidence before me for consideration in support of this testimony and the letter in the documentary evidence before me dated March 23, 2018, from the current property manager N.S. to the Landlord, clearly states that he does not yet have strata council approval for his proposed renovations.

Although the Landlord alleged that the Tenant is inappropriately using her position as a strata council member to influence strata council decisions and improperly delay her eviction, I find that issue is beyond the scope of my jurisdiction as it relates to the functioning of the strata and strata council, not a Residential Tenancy matter. As a result, I have made no findings of fact or law in relation to those allegations.

Based on the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that he has all the necessary permits and approvals required by law to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. As a result, I set aside my decision and orders dated March 19, 2018, and substitute them with the following decision and orders.

I order that the Two Month Notice dated September 24, 2017, be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*. Pursuant to section 72 of the *Act*, I find that the Tenants are entitled to the recovery of their \$100.00 Application filing fee. Further to this, I also find that the Tenants are entitled to the recovery of the \$50.00 Review Consideration filing fee and to recover from the Landlord, the \$100.00 they paid towards the Landlord's filing fee as a result of the decision and Monetary Order issued on March 19, 2018.

Based on the above, the Tenants are therefore entitled to compensation in the amount of \$250.00, which they are entitled to deduct from the next month's rent or to recover by way of the attached Monetary Order.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$250.00. The Tenants are provided with this Order in the above terms and the Landlord must be

served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Should the Tenants wish to do so, they may choose to deduct the above noted amount from the next month's rent in lieu of enforcing this Monetary Order.

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: June 8, 2018

Residential Tenancy Branch