



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, MNDCT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties confirmed that they had exchanged their documentary evidence.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for damage or loss suffered under the *Act*, regulation or the tenancy agreement?

Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

LH gave the following testimony. The tenancy began on September 22, 2018 with the monthly rent currently at \$525.00. LH testified that she will be moving into the subject unit to care for her father who is the owner of the home; who suffers from dementia and requires regular kidney dialysis. LH testified that a 2 Month Notice to End Tenancy for Landlords Use of Property was issued on July 21, 2018 with an effective date of September 30, 2018. The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The tenant gave the following testimony. The tenant testified that he does believe that the landlords' daughter will move in eventually but doesn't think she needs to. The tenant testified that he should be entitled to \$14000.00 as compensation for having to deal with two notices to end tenancy.

Analysis

The tenant gave sworn testimony that he received the 2 Month Notice to End Tenancy on July 21, 2018 and did not file to dispute the notice until August 9, 2018. LH submitted that the tenant was outside the legislated timeline to dispute the notice and therefore his application to dispute it should be dismissed.

Section 49(8) and (9) of the Act address the issue before me as follows:

- (8) A tenant may dispute
 - (a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution **within 15 days** after the date the tenant receives the notice, or
- (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.**

Despite the fact the tenant was given several opportunities to provide an explanation as to why he was late in filing his application, his only response was "I agree it's a bit late". The tenant has not put forth sufficient evidence for me to consider any exceptional circumstances. Based on the above, I find that the tenant has applied outside of the legislated timeline to dispute a notice to end tenancy, accordingly; I dismiss this portion of the tenants' application.

Based on my decision to dismiss this portion of the tenant's application for dispute resolution and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an order of possession. The tenancy is terminated.

I address the tenants' monetary claim as follows. The tenant acknowledged and confirmed that he is attempting to advance the same claim on the same grounds as was made in a previous hearing. However, the Arbitrator made a finding that the tenants' monetary claim was dismissed. As the matter has already been dealt with I find that res judicata applies. This was explained to the tenant and the tenant indicated that he understood.

The tenant has not been successful in any portion of their application.

Conclusion

The 2 Month Notice to End Tenancy for Landlords Use of Property dated July 21, 2018 with an effective date of September 30, 2018 is confirmed, it is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession.

The tenants' application is dismissed in its entirety without leave to reapply.

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: September 25, 2018

Residential Tenancy Branch