



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIONS COURT HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, OLC, FFT

Introduction

On November 13, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing with M.N. as her advocate. K.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant confirmed that she served the Landlord the Notice of Hearing package by registered mail on November 15, 2018 and the Landlord confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing package.

The Landlord advised that he received the Tenant’s evidence personally on December 5, 2018 and that he was prepared to respond to it. As well, he advised that he posted his evidence to the Tenant’s door on December 7, 2018 and the Tenant confirmed that she received this evidence. As such, I have accepted all evidence submitted and it will be considered when rendering this decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Tenant’s Application with respect to the

Notice, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recovery of the filing fee?

Background, Evidence, and Analysis

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2013. Rent was currently established at \$1,511.28 per month, due on the first of each month. A security deposit of \$650.00 was paid.

The Landlord advised that the Tenant was served the Notice on October 29, 2018 by being put through the Tenant's mail slot. The Tenant advised that she received this Notice on November 1, 2018. The effective date of the Notice was noted as December 31, 2018.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenant on or around October 29, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Both parties confirmed that the Landlord did not sign the Notice. As such, I am not satisfied of the validity of the Notice as it does not comply with Section 52. Therefore, I find that the Notice of October 29, 2018 is of no force and effect.

During the hearing, the Tenant advised that she had lost the key fob to the building last year, that she has not had access to the building since, and that she has to wait for someone to let her in the building. She stated that she requested a new fob from the Landlord, but she has yet to receive a replacement fob.

The Landlord advised that he had placed a new fob into the Tenant's mail slot on November 27, 2018. However, the Tenant stated that she never received this. The Landlord believes that the Tenant's son took the fob and is not giving it to her, which the Tenant denies. The Landlord offered to cancel any fobs issued to the Tenant in the past and to re-issue a new fob to the Tenant. The parties agreed to meet on their own to exchange the new fob and to discuss payment for it. As such, I have not made any Order with respect to this issue.

As the Tenant was successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. As such, the Tenant is permitted to withhold this amount from a future month's rent to satisfy this debt.

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of October 29, 2018 to be cancelled and of no force or effect. This tenancy

continues until ended in accordance with the *Act*. The Tenant is also allowed to withhold the \$100.00 filing fee from a future month's 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: December 20, 2018

Residential Tenancy Branch