



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC

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; and
- a monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of a 2 Month Notice on October 7, 2018 and landlord's evidence. The landlord confirmed receipt of the tenant's application for dispute resolution dated October 22, 2018, amendment dated November 19, 2018 and evidentiary materials. Based on the testimonies of the parties I find that each party was served with the documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

The parties agreed on the following facts. The tenant began residing in the rental unit in or about June, 2015. The parties most recently signed a new periodic tenancy agreement in April, 2018. The current monthly rent is \$950.00 payable by the 31st of the previous month. A security deposit of \$425.00 was paid for this tenancy and is held by the landlord.

While the parties testified that a 2 Month Notice was issued, neither party submitted a copy of the 2 Month Notice into evidence. The parties testified that the reason provided on the 2 Month Notice is that the rental unit will be occupied by the landlord or the landlord's close family member.

The landlord testified that they are currently residing with their parent and intend to move into the rental suite with their partner. The tenant said that they believed the landlord intends to occupy the rental unit but wondered if they would later rent out the suite or sell the building.

The tenant testified that they performed significant work on the rental property at their own expense. The tenant said the work included tending to the yard, seeding, maintaining the pathway and the working on the patio. The parties both testified that the tenant was not required to perform this work nor was there an agreement between the parties that the tenant would be compensated for the work. The tenant testified that she undertook the work on her own as she expected to reside in the rental unit long term. The tenant seeks a monetary award of \$3,000.00 for the labor and cost of work.

The tenant also seeks a return of the security deposit of \$425.00 for this tenancy.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

While the parties testified that the tenant was served with a 2 Month Notice, neither party submitted a copy of the 2 Month Notice into evidence.

In the absence of a 2 Month Notice in evidence, I find that there is insufficient evidence to determine that a proper Notice, conforming with the form and content requirements of section 52 of the *Act* was issued. I therefore find that the landlord has not met their evidentiary burden. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. This tenancy continues until ended in accordance with the *Act*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the tenant's application for a monetary award. The parties testified that the work undertaken by the tenant was done freely without any agreement that the tenant would be compensated. I accept the evidence of the parties that the work done and any expenditure made by the tenant were of her own choosing. I find that there has been no violation of the *Act*, regulations or tenancy agreement by the landlord that would lead to a basis for a monetary award.

A party may not unilaterally undertake work and after it is completed turn to another party and claim compensation for work that was neither requested nor desired. I find that the tenant's claim for a monetary award has no merit.

As this tenancy has not yet ended it is premature to issue an order for the return of the security deposit.

For the above reasons I dismiss the tenant's application for a monetary award.

Conclusion

The 2 Month Notice of October 24, 2018 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The balance of the tenant's application is dismissed 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: December 6, 2018

Residential Tenancy Branch