



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1024028 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M, DRI, FFT

Introduction

On December 19, 2018, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the “Notice”) pursuant to Section 49 of the *Residential Tenancy Act* (the “Act”), seeking to dispute a rent increase pursuant to Section 41 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance during the 27-minute conference call. The Tenant provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package and evidence by registered mail on December 21, 2018 (the registered mail tracking number is on the first page of this decision). Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was deemed to have received the Notice of Hearing package and evidence five days after it was mailed.

During the hearing, I advised the Tenant that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the Tenant that this hearing would primarily address the Notice, that his other claims would be dismissed, and that the Tenant is at liberty to apply for these 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 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 recover the filing fee?

Background and Evidence

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.

The Tenant stated that the tenancy started on October 1, 2015. Rent was established at \$1,750.00 per month, due on the first day of each month. The Tenant paid a security deposit of \$800.00.

The Tenant stated that the Landlord served the Notice by placing it in his mailbox on December 1, 2018 and that he received the Notice the next day. The reason the Landlord served the Notice is to “perform renovations or repairs that are so extensive that the rental unit must be vacant.” The Notice indicated that the effective end date of the Notice was April 1, 2019.

Analysis

The onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. As such, I am not satisfied of the validity of the Notice and I find that the Notice of December 1, 2018 is of no force and effect.

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

Conclusion

Based on the above, I hereby order that the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit of December 1, 2018 to be cancelled and of no force or effect.

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: February 1, 2019

Residential Tenancy Branch