



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, ERP, FFT, OLC, RP, MNDCT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a 10 day Notice to End Tenancy dated March 16, 2019.
- b. An order for emergency repairs or repairs.
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order for a monetary order in the sum of \$10,000
- e. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenants on March 16, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on landlord by mailing, by registered mail to where the landlord resides on March 28, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling a 10 day Notice to End Tenancy dated March 16, 2019?
- b. Whether the tenants are entitled to an order for repairs or emergency repairs?
- c. Whether the tenants are entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement?
- d. Whether the tenants are entitled to a monetary order and if so how much?
- e. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on July 1, 2017 although the tenants moved in belongings prior to that date. The rent was \$2700 per month per month payable on the first day of each month. The tenants

testified the landlord agreed to monthly rental payments at a later date in the month. The tenants did not pay a security deposit.

The tenants testified there was discussion between the landlord and the tenants that the landlords would need the rental unit either to sell the property or for renovations. However, it does not appear the Tenants were served with a 2 month Notice to End Tenancy in the approved government form. The landlord subsequently served the Tenants with a 10 day Notice to End Tenancy. The tenants submit they are entitled to the equivalent of one month rent because the landlord told them she intends to take possession.

The tenants decided to move out of the property and they vacated on March 31, 2019. The tenants believe they have claims against the landlord including a claim under section 51 of the Act but they stated they do not wish to reinstate the tenancy.

The landlord filed a large number of documents that indicate the landlord believes that she has a number of claims against the Tenants. However, the landlord has not filed an Application for Dispute Resolution.

Analysis:

The tenancy has come to an end. As a result I determined the following claims made by the Tenants are moot and they are dismissed without leave to re-apply:

- a. An order to cancel a 10 day Notice to End Tenancy dated March 16, 2019.
- b. An order for emergency repairs or repairs.
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.

One of the fundamental principles of our legal system is that an applicant must identify and particularize the claims the applicant is making so that the respondent has an opportunity to defend themselves. The Rules of Procedure assist the parties by making available a monetary order worksheet. I determined the Tenants failed to sufficiently particularize the monetary claims they are making. In the circumstances I determined it was appropriate to dismiss the Tenants monetary claim with liberty to re-apply.

I dismissed the tenants claim to recover the cost of the filing fee as the Tenants were not successful with this application.

The landlord has not filed an Application for Dispute Resolution. The landlord retains the right to file an Application for Dispute Resolution and make whatever monetary claims they think they are entitled to.

One of the disputes between the parties is whether the tenants are entitled to make claims under section 51 of the Act. The parties are encouraged to get legal assistance. As a courtesy for the parties I pasted that portion of the Act into this decision.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Conclusion

The Tenants claim for a monetary order is dismissed with liberty to re-apply. All other claims are dismissed without liberty to re-apply.

This decision is final and binding on both parties.

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: April 29, 2019

Residential Tenancy Branch