



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, MNDC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord via email (subject to a substitute service order) with the notice of hearing package and the submitted documentary evidence. Both parties also agreed that the landlord served the tenant with the submitted documentary evidence via email on October 28, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

Both parties also confirmed the tenant served the landlord with the amendment to the application adding a monetary claim of \$8,400.00 for the difference in future rent at a new tenancy via email. I accept the undisputed evidence of both parties and find that the tenant has sufficiently served the landlord with the amendment to the application for dispute and is deemed served as per section 90 of the Act.

At the outset, extensive discussions with both parties determined that the tenant's monetary claim was pre-mature as she still occupies the rental unit but seeks a

monetary claim for compensation for the difference in future rent not yet obtained. This portion of the tenant's application is dismissed with leave to reapply.

Discussions continued regarding the tenant's application to cancel a 1 month notice. The tenant clarified that she was in fact seeking an order to cancel a 2 month notice. The tenant stated that she was aware of the error but did not correct it. Further discussions with both parties revealed that no actual 2 month notice was issued or served to the tenant. Both parties confirmed that a "formal notice" a paragraph in an email given by the landlord was a request for the tenant to vacate the property by November 30, 2019. At this time extensive discussions took place on whether the Residential Tenancy Branch had jurisdiction. Both parties confirmed that no arguments were being made that the Residential Tenancy Branch did not have jurisdiction. On this basis, the hearing proceeded. Both parties were advised that pursuant to section 52 of the Act, a notice to end tenancy when given by a landlord must be in the approved form. In this case, a 2 month notice to end tenancy is form RTB-32. As both parties have confirmed that the landlord has not issued or served an RTB-32, the tenant's application is "moot". An order to cancel a notice that was not given cannot be made, but a finding in which the landlord has failed to issue the proper notice using the proper form. The tenancy continues.

The tenant's application is dismissed.

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: November 08, 2019

Residential Tenancy Branch