



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC FF

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the landlord for review of a decision dated September 20, 2019. In the original decision, the tenant was granted a monetary award of \$24,100.00 for the landlord's failure to use the rental unit for the purpose stated in a Two Month Notice to End Tenancy (the "Two Month Notice"). The original decision and order were subsequently suspended pending the outcome of this review hearing.

All named parties attended this review hearing by conference call.

Issues

Should the original decision and order dated September 13, 2018 be confirmed, varied or set aside?

Evidence & Analysis

In the Review Consideration Decision, the landlord was provided instructions to serve on the tenant a copy of the Review Consideration Decision and the accompanying Notice of Review Hearing within three days of receiving the decision. The Review Consideration Decision was issued on December 2, 2019. The landlord's agent testified that he was not aware he had to serve the Notice of the tenant. The landlord's agent confirmed that the landlord has also not submitted any evidence for this matter either on the tenant or to the Residential Tenancy Branch.

The tenant testified that she only became aware of the Review Hearing as well as courtesy e-mail sent by the Branch. The tenant submits that the landlord has not provided a new address for service either as required in the Review Consideration Decision. The

tenant further submits that the landlord obtained the review hearing on fraudulent grounds by claiming they did not serve the tenant with a Two Month Notice and that the tenant made up the document. The tenant submits that in a previous hearing (File # referenced on the cover page of this decision) the landlord was issued an order of possession based upon the same Two Month Notice.

The landlord's agent submits that when he applied for the review he asked the landlord if he knew the name of the person who's name appears on the Two Month Notice acting as agent for the landlord and the landlord stated he did not. For this reason, in the review application he stated the Two Month Notice had never been issued and had been fabricated by the tenant. In the review hearing, the landlord's agent and landlord's wife acknowledged that the Two Month Notice had in fact been issued by the landlord; however, argued that it was issued on an incorrect ground and it should have issued on the ground of the tenant conducting a business in the rental unit. When questioned why the landlord proceeded to then obtain an order of possession on an incorrect Notice or ground, the landlord's wife suddenly argued that the rental unit was to be occupied by the landlord son who passed away.

The landlord did not serve the tenant with a copy of the Review Consideration Decision and the accompanying Notice of Review Hearing as required although clear instructions to do so were provided in the review consideration decision.

Pursuant to section 81(c) of the Act, the director may dismiss or refuse to consider an application for review if the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Additionally, I find this review hearing was obtained on a fraudulent basis. The landlord obtained an order of possession and the tenant had to vacate the rental unit as a result of the Two Month Notice. The landlord can not now argue that the Notice was issued on incorrect grounds. The landlord's agent and wife changed their story for a third time and purported to argue that the landlord's son intended to occupy the unit but passed away before he could; however, no documentary evidence was provided to support this claim.

As the landlord failed to properly follow an order made in the course of the review and for the reasons above, I dismiss the landlord's application for review.

Conclusion

I confirm the original decision and Order dated September 20, 2019.

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 06, 2020

Residential Tenancy Branch