



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Seto Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, PSF, RP, OLC, MNDCT, FFT**

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice"); for orders for the landlord to make repairs; for orders for the landlord to provide services or facilities; for orders for the landlord to comply with the Act, regulations or tenancy agreement; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Naming of landlord

The tenant had named the building manager as landlord in filing her Application for Dispute Resolution instead of the corporate landlord identified on her tenancy agreement and the 1 Month Notice. By consent of both parties, I amended the tenant's Application for Dispute Resolution to name the corporate landlord and exclude the building manager's name in the style of cause.

2. Service of hearing materials

The tenant testified that she sent the proceeding package and approximately 100 pages of evidence to the landlord via registered mail on October 26, 2020. The landlord confirmed receipt of this package.

The tenant testified that she sent additional evidence to the landlord via registered mail on December 18, 2020. The landlord confirmed receipt of this package on December 23, 2020.

The landlord's agent testified that he served the landlord's evidence to the tenant in person on December 31, 2020. The tenant confirmed receipt of the landlord's evidence package.

I was satisfied the parties had exchanged their respective documents and I was prepared to admit them into evidence for consideration in making this decision.

3. End of Tenancy

The parties confirmed that the tenant vacated and returned possession of the rental unit to the landlord on December 31, 2020. Accordingly, I found the tenant's request for cancellation of the 1 Month Notice and the landlord's need for an Order of Possession to be moot at this time.

Since the tenancy is over the tenant's requests for orders for repairs, services and facilities, and compliance are also moot.

4. Monetary claim

The tenant confirmed that she wished to proceed with her monetary claims; however, she wished to amend the claim to include another amount related to parking charges. I noted that the details of dispute for the monetary claim did not indicate a dispute concerning parking charges. The tenant acknowledged she tried to make the parking claim by way of an evidence submission served to the landlord on December 18, 2020 and she did not serve the landlord with an Amendment to an Application for Dispute Resolution.

In considering whether to amend the monetary claim during the hearing to add the parking claim I turned to the landlord's agent to determine what he was prepared to deal with that at this hearing.

The landlord's agent responded that he was not prepared to deal with a claim pertaining to parking and that the landlord's primary focus had been on preparing to deal with the disputed 1 Month Notice. The landlord's agent requested that if this proceeding was going to deal with the monetary claim that an adjournment be granted to permit the

owner of the property to participate as the owner has been experiencing health issues of late.

I noted that the monetary claim had been identified on the Application for Dispute Resolution that was served to the landlord on October 26, 2020 and I indicated that I was prepared to proceed to consider it but that I would not amend the claim to add a dispute concerning parking since the tenant did not amend the claim properly, in accordance with the Rules of Procedure, and the landlord was not sufficiently prepared to deal with a parking claim. I informed the parties the tenant may seek compensation related to parking by way of another Application for Dispute Resolution. The tenant indicated that she would file another Application for Dispute Resolution to seek compensation for parking.

In turning to the documents the tenant submitted in support of the monetary claim that was filed, I noted that a Monetary Order worksheet had been submitted but that there were no amounts provided on the second page. The tenant stated she could not find her copy of the Monetary Order worksheet but that she had provided a detailed calculation on two statements she prepared under her request for orders for compliance.

I asked the landlord's agent to find the Monetary Order Worksheet he received from the tenant with a view to determining whether the landlord had been provided a breakdown of the amounts claimed. The landlord's agent stated he would need some time to find it as he had received approximately 200 pages from the tenant and the packages were not indexed, numbered or otherwise organized. The tenant disagreed and was of the view she had sufficiently sectioned the packages and numbered photographs and evidence. The tenant confirmed that the landlord's agent is accurate in that she served approximately 200 pages and she acknowledged that she did not tabulate the sections or provide an index.

Considering all of the above, I decided to sever the tenant's monetary claim from the Application for Dispute Resolution and dismiss it with leave to reapply, for the following reasons:

- A. Rules 2.3 and 6.2 of the Rules of Procedure provide that claims made on a single application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims, with or without leave. Below, I have reproduced Rule 2.3 and Rule 6.2 of the Rules of Procedure:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

[My emphasis underlined]

Considering the tenant did not properly amend her Application for Dispute Resolution to remove the request for cancellation of the 1 Month Notice and the tenancy had ended only a few days ago, I find the landlord's position, that in preparing for this proceeding the landlord's primary focus had been on providing evidence in support of the 1 Month Notice, to have merit.

- B. Rule 2.5 of the Rules of Procedure provide that a monetary claim should be accompanied by a detailed calculation. The tenant did not provide amounts on the Monetary Order worksheet and the calculations she did make fell under the issue of "Orders for Compliance" which became moot with the end of the tenancy rather than under a section for monetary compensation. As such, I find the tenant's calculations were likely not obvious to the landlord in preparing for this proceeding.
- C. Rule 3.7 of the Rules of Procedure provide that evidence must be organized, clear and legible. I heard disputed submissions as to whether the tenant's submissions were sufficiently organized. It was clear to me that the tenant had served the landlord with a significant number of documents and in such cases, it becomes even more critical to ensure the package is sufficiently organized and that would

include numbering of all pages and possible indexing or tabulating the package. The pages before me were not numbered and I accept the landlord's position that the tenant's packages were not sufficiently organized.

- D. Since the tenant intends to make another Application for Dispute Resolution to make a monetary claim related to parking, and the statutory time limit for filing a claim has not about to expire, I am satisfied the tenant is not prejudiced by dismissal of the monetary claim, with leave to reapply.

Conclusion

The tenancy has already ended and the tenant's request for cancellation of a 1 Month Notice and other orders for repairs, services and facilities, and compliance are moot.

The tenant's monetary claim was severed and dismissed with 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: January 08, 2021

Residential Tenancy Branch