



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kettle Creek 2020 Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL-MT, OLC, MNDCT**

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice"), and more time to make the application; and, orders for the landlord to comply with the Act, regulations, or tenancy agreement. The tenants subsequent filed an amendment seeking to add a monetary claim to the application.

Both parties appeared or were represented at the hearing.

I confirmed the tenant had sent the original proceeding package and available evidence at that time to the landlord via registered mail sent on October 8, 2021. The landlord confirmed receipt of this package.

The tenant served the Amendment, along with a Monetary Order worksheet and another copy of the original proceeding package to the landlord via registered mail on December 11, 2021. The landlord confirmed receipt of this package.

The landlord's response and evidence were sent to the tenant via email and registered mail on January 28, 2022 and the package was delivered by Canada Post on February 3, 2022. The tenant confirmed receiving the landlord's package in her mailbox.

Preliminary and Procedural Matters

I noted that neither party had submitted a copy of a Two Month Notice in the approved form but that I was in receipt of a Mutual Agreement to End a Tenancy ("Mutual Agreement"). The parties confirmed that a Two Month Notice in the approved form had not been issued by the landlord. The tenant clarified that in filing their Application for Dispute Resolution, they were seeking to have the Mutual Agreement set aside. Both

parties also confirmed that the tenants have vacated the rental unit on November 15, 2021 and possession of the rental unit has been returned to the landlord. As such, I found the tenant's request for cancellation of a Two Month Notice or a Mutual Agreement to be moot as the date of the hearing.

As for the Amendment and Monetary Order worksheet that was submitted, I noted that it referenced the Act and "allowable compensation" for displacement of the tenants in bad faith, as a basis for the claim but no specific provision of the Act or other particulars were provided with the filing. I noted that the landlord's evidence included documents that may be relevant to a landlord's damage claim or disposal of a security deposit which gave me pause as to whether the basis for the claim had been sufficiently set out. The landlord's legal counsel stated that they did assume the tenants were seeking compensation under section 51(2) of the Act since they requested compensation equivalent of one year's worth of rent and section 51(2) is the only provision that provides for such a calculation; and, based on that assumption they had prepared a response but that they were not prepared to respond to a claim being made under a different provision. I turned to the tenant and asked whether she was in fact making a claim under section 51(2) even though the landlord had not served a Two Month Notice to which the tenant indicated she was uncertain as she had not familiarized herself with the Act and had not yet sought out legal advice on the matter. The tenant stated she was not prepared to proceed to demonstrate the tenants' entitlement to compensation.

Under section 59(2) of the Act, an applicant is required to set out the basis for their claim, including providing full particulars. The tenant's Amendment was very scant and resulted in an uncertainty as to the basis for the claim as evidenced by the landlord's lawyer confirming they prepared a response merely on an assumption based on the amount of compensation claimed by the tenants. Given the tenants' lack of particulars and basis for the claim, I declined to accept the application for a monetary claim pursuant to the authority afforded me under section 59(5) of the Act.

The tenant's monetary claim was dismissed with leave to reapply.

The landlord indicated a willingness to reach a settlement with the tenants but their proposal was not accepted. I encouraged the parties to reconsider settlement before re-filing.

Conclusion

The tenants' request for cancellation of a notice to end tenancy or a Mutual Agreement is moot as the tenants have already vacated the rental unit. The tenant's monetary claim was not sufficiently set out and it was 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: February 16, 2022

Residential Tenancy Branch