



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL MNRT FFT**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant applied for the following:

- an order cancelling a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant dated April 1, 2022 (“2 Month Notice”) pursuant to section 49;
- an order for that the Landlord pay the Tenant for the cost of emergency repairs made by the Tenant pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72.

The Landlord and Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding (“NDRP”) on the Landlord in-person but he could not remember the date of service. The Landlord acknowledged she received the NDRP. I find the NDRP was served on the Landlord in accordance with the provisions of section 89 of the Act.

The Landlord stated she served her evidence on the Tenant’s door on August 9, 2022. The Tenant acknowledged he received the Landlord’s evidence. I find the Landlord’s evidence was served on the Tenant in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Tenant’s Evidence on Landlord

The Tenant stated he forgot to serve the Landlord with his evidence at the time he served the NDRP on the Landlord. The Tenant stated he returned an hour later and served the Tenant on the Landlord in-person. The Landlord denied she received the Tenant’s evidence. The Tenant admitted he did not have a witness with him at the time he allegedly served the Landlord with his evidence. I find the Tenant has not demonstrated, on a balance of probabilities, that he served his evidence on the Landlord. As such, the Tenant’s evidence is not admissible for this proceeding. I told the Tenant that, notwithstanding his evidence was not admissible, he had the option of providing, or call witnesses to provide, testimony on the contents of his evidence.

Preliminary Matter – Severance and Dismissal of Tenant’s Claim

The Application contained a claim for an order that the Landlord pay the Tenant for the cost of emergency repairs made by the Tenant. Rule 2.3 of the RoP states:

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch (“RTB”) are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the Original Hearing, I advised the parties the primary issue in the Application was whether the tenancy would continue or end based on whether the 2 Month Notice was cancelled. Accordingly, I find the Tenant’s claim for an order that the Landlord pay the Tenant for the cost of emergency repairs made by the Tenant is not sufficiently related to the primary issue of whether the 2 Month Notice is upheld or set aside. Based on the above, I sever the Tenant’s claim for an order that the Landlord pay the Tenant for the cost of emergency repairs made by the Tenant and dismiss that claim with leave to reapply.

Preliminary Matter – Cancellation of 2 Month Notice by Landlord

At the outset of the hearing, the Tenant stated the Landlord served him with a One Month Notice to End Tenancy for Cause ("1 Month Notice"). The Tenant stated he has made an application for dispute resolution to dispute the 1 Month Notice. The Landlord stated that she was told by the RTB that she had the option of serving the Tenant with the 2 Month Notice. The Landlord stated that, after serving the 2 Month Notice, she realized she should have served the Tenant with a One Month Notice for Cause instead of the 2 Month Notice. The Landlord stated she wanted to cancel the 2 Month Notice. At the Landlord's request, I cancel the 1 Month Notice. The Tenancy continues until ended pursuant to the provisions of the Act.

As the 2 Month Notice has been cancelled, the Tenant has been successful in the Application. As such, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Conclusion

The 2 Month Notice is cancelled. The Tenancy continues until ended in accordance with the provisions of the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Application.

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: August 18, 2022

Residential Tenancy Branch