

DECISION

Dispute Codes CNC, MNDC

Introduction

This face-to-face hearing in the Burnaby Office of the Residential Tenancy Branch (RTB) dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's "30 Day Eviction Notice" of September 1, 2011 pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on September 13, 2011. I am satisfied that the tenant served this hearing package to the landlord in accordance with the *Act*.

The tenant confirmed that the landlord handed her the hand-written 30 Day Eviction Notice on September 1, 2011.

The landlord confirmed that she received copies of the tenant's written evidence package. The landlord did not serve copies of her written evidence to the tenant because she was unaware that she had to do so. Based on the tenant's written evidence and her application for dispute resolution, it did not appear necessary to consider an adjournment of this hearing to allow the landlord an opportunity to comply with the requirement to serve her written evidence to the tenant.

At the hearing, the landlord made an oral request for an Order of Possession if the tenant's application to cancel the notice to end tenancy were dismissed.

Issues(s) to be Decided

Should the tenant's application to cancel the landlord's notice to end tenancy be allowed? If not, should the landlord be issued an Order of Possession? Is the tenant entitled to a monetary award?

Background and Evidence

This month-to-month tenancy commenced on September 15, 2010. Monthly rent was initially set at \$680.00, payable on the first. The landlord continues to hold the tenant's \$340.00 security deposit.

The tenant entered into written evidence a copy of the landlord's handwritten "30 Day Eviction Notice" which reads in part as follows:

Dear Madam,

*You are hereby given a 30 day eviction notice to vacate your two bedroom basement suite located at *%\$^.*

You were advised on August 1, 2011 to stop smoking cigarets in your suite (See your rent receipt dated August 1st 2011). You are herby required to vacate the suite before October 1, 2011...

The tenant requested cancellation of this notice for a number of reasons. One of the reasons cited by the tenant was her claim that the above notice did not comply with the *Act* and did not properly advise her of the reason for seeking an end to this tenancy.

The tenant applied for a monetary award of \$34.53. She completed a monetary order worksheet which listed the items in her requested monetary award as follows:

Item	Amount
Rat Poison	\$11.24
Photocopies	4.59
Computer Use	7.50
Photocopies at UPS Store	11.20
Total Monetary Award Requested	\$34.53

She also submitted receipts to support her application for a monetary award.

Analysis

Section 47(3) of the *Act* establishes that a 1 Month Notice to End Tenancy for Cause (a 1 Month Notice) issued under section 47 of the *Act* "must comply with section 52 [form and content of notice to end tenancy]." The 1 Month Notice appears to be the closest equivalent to the 30 Day Eviction Notice the landlord served to the tenant on September 1, 2011. Section 52 of the *Act* reads in part as follows:

52 *In order to be effective, a notice to end tenancy must be in writing and must...*

- (d) state the grounds for ending the tenancy, and*
- (e) when given by a landlord, be in the approved form.*

I find that the landlord's "30 Day Eviction Notice" of September 1, 2011 does not comply with either section 52(d) or (e) of the *Act*. Since the landlord's handwritten notice was not on the approved form and did not properly identify the reason listed on the approved form for ending the tenancy, I allow the tenant's application to cancel the landlord's notice to end this tenancy. I find that the landlord's September 1, 2011 "30 Day Eviction Notice" is invalid and of no effect. This tenancy continues.

I have also considered the tenant's application for a monetary award of \$34.53. At the hearing, I advised the tenant that her applications for photocopies and computer use were costs of conducting her application for dispute resolution that were not covered under the *Act*. I noted that the only recoverable portion of a parties' costs associated with a dispute resolution proceeding was the filing for the application. As the tenant's cost of filing her application was waived by the RTB, there was no filing fee for her to recover from the landlord.

I advised the tenant that the only potential expense that she could recover from the landlord was for the tenant's purchase of rat poison. The parties agreed that the landlord never told the tenant that she would reimburse the tenant for her purchase of rat poison for the tenant's rental unit. Without such agreement from the landlord, the only potential way that the tenant could recover the cost of her purchase of rat poison would be if the purchase were considered to be done in the context of an emergency repair of the rental unit pursuant to section 33 of the *Act*. To do so, the tenant would need to demonstrate that she had given the landlord a reasonable chance to conduct repairs herself, that the landlord had failed to or refused to conduct such repairs, and that the tenant had no option but to purchase the item and conduct the emergency repair herself.

Based on my understanding of the sequence of events that gave rise to the tenant's purchase of rat poison, I find no evidence that would support a finding that this purchase qualified as an emergency repair. I find that the landlord is not responsible for reimbursing the tenant for her purchase of rat poison. For the above reasons, I dismiss all elements of the tenant's claim for a monetary award without leave to reapply.

Conclusion

I allow the tenant's application to cancel the landlord's "30 Day Eviction Notice" of September 1, 2011. I find that the landlord's eviction notice is invalid with the effect that this tenancy continues.

I dismiss the tenant's application for a monetary award without 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*.