



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC MNDC OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 47
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant's application was filed within the time period required under the Act.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

As the tenants' application for a monetary order for compensation for damage or loss and an order requiring the landlord to comply with the Act is not related to the issue of whether or not the landlord had cause to issue the 1 Month Notice, I am exercising my discretion to dismiss this portion of the tenants' claim with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The rental unit is a basement suite of a residential dwelling in which the upper unit is occupied by the landlord. The tenancy began on August 29, 2014 with a monthly rent of \$900.00 plus a \$15.00/month PVR rental fee payable on the 1st day of each month. In April 2016 the monthly rent was increased to \$925.00 per month. The tenant paid a security deposit of \$450.00 at the start of the tenancy.

The landlord served the tenant with the 1 Month Notice on July 4, 2016. The tenant acknowledged receipt of this Notice on July 4, 2016. On the second page of the Notice, the landlord did not check off any of the available boxes as to the reason for issuing the 1 Month Notice. In the details section of this Notice, the landlord indicated it was for personal reasons.

The tenants filed an application to dispute the 1 Month Notice on July 6, 2016 and paid the accompanying filing fee. Later on this same date, the landlord issued a written letter to the tenants advising that she had withdrawn the 1 Month Notice issued on July 4, 2016.

Subsequently on July 23, 2016 the tenants provided written notice to end the tenancy effective at the end of August 2016.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

After the filing of this application, the landlord provided written notice to the tenants that she was withdrawing the 1 Month Notice.

Accordingly, the 1 Month Notice on which this application was based is no longer valid.

As at the time of filing the application, the 1 Month Notice was not yet withdrawn by the landlord, I find the tenant had no choice but to file an application to dispute the Notice. I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$100.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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, 2016

Residential Tenancy Branch