



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, OLC, MNDCT, FFT

Introduction

On August 27, 2021, the Tenant applied for a Dispute Resolution proceeding seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”), seeking a repair Order pursuant to Section 32 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 20, 2021, the Tenant amended her Application seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) pursuant to Section 49 of the *Act* and seeking to increase the amount of monetary compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with T.B. attending as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms.

The Tenant advised that her friend served the Landlord the Notice of Hearing package by hand on or around September 14, 2021 and the Landlord confirmed that she

received this package. Based on this undisputed testimony, I am satisfied that the Landlord was duly served the Notice of Hearing package.

The Tenant advised that her friend served the Amendment by placing it in the Landlord's mailbox on December 20, 2021; however, she did not submit any proof of service confirming that this was done. The Landlord advised that she did not receive this Amendment as she had moved to Arizona on November 22, 2021 and had someone else staying in the property looking after it, which may be contrary to the reason for which the Two Month Notice to End Tenancy for Landlord's Use of Property was served. Regardless, she stated that this caretaker would have been checking the mail, and that no Amendment was ever received.

As I am not satisfied that this Amendment was served to the Landlord in accordance with Rule 4.6 of the Rules of Procedure, I determined that the amended claims in the Application would not be considered and that the hearing would proceed on the original claims in the Tenant's Application.

It should be noted that all parties agreed that the Tenant gave up vacant possession of the rental unit on November 1, 2021. As such, the original claims in the Tenant's Application for a repair Order and an Order to comply were moot issues. As well, any claim to cancel the Notice would be moot as well.

As the remaining claim in the Tenant's original Application was for a Monetary Order in the amount of \$1.00, the Tenant advised that she would withdraw her Application in order to apply again for the full amount of compensation that she is seeking relief for.

Preliminary and Procedural Matters

I find that the Tenant's request to withdraw the Application in full does not prejudice the Landlord. Therefore, the Tenant's request to withdraw the Application in full was granted. I note this Decision does not extend any applicable timelines under the *Act*.

As the Tenant withdrew her Application, I do not find that the Tenant is entitled to recover the \$100.00 filing fee.

Conclusion

The Tenant has withdrawn her Application in full. The Tenant's request for monetary compensation is 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 7, 2022

Residential Tenancy Branch