



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with the tenant's application for a Monetary Order for compensation for damages or loss under the Act, regulations or tenancy agreement. The tenant is also requesting recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions. The landlord was assisted by legal counsel and had a witness attend the proceeding.

Issue(s) to be Decided

1. Identity of the landlord.
2. Whether the tenant has established an entitlement to compensation under the Act, regulations or tenancy agreement.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony I find that the tenancy commenced July 15, 2007 and the tenant vacated the rental unit near the end of April 2008. The tenant had been paying rent in the amount of \$2,000.00 per month.

The tenant claims that the landlord ended the tenancy and did not compensate him one month's rent for landlord's use of property and the notice to end tenancy was not on the proper form. The tenant is also seeking compensation equivalent to two additional

months of rent since the landlord did not use the rental unit for the purpose given to the tenant. The tenant submitted that he was provided with a letter written by the landlord on February 28, 2008 advising the tenant that the rental unit had been sold and that the tenancy would be terminated on March 31, 2008, with permission for the tenant to overhold until April 15, 2008. The tenant submitted that he made requests to be permitted to remain in the rental unit longer but that he was only permitted to stay until the end of April 2008. The tenant acknowledged that he had purchased a condominium in the adjacent building and that he moved in to his condominium when he vacated the rental unit; however, the tenant stated that he did not want to give up the tenancy as soon as the landlord required him to vacate. The tenant further explained that had the tenancy not ended he would have used the unit to accommodate his visiting son or guests. The tenant also described how he had to move many of belongings to storage as he did not want to move them to the condominium and that moving the property to storage cost him approximately \$1,350.00.

The tenant testified that he was told by the landlord that the tenancy would end so that the new owner could perform substantial renovations and join the rental unit to the adjacent unit in the building; however, since moving out, the tenant has learned that the rental unit was re-rented to other tenants.

The landlord's legal representative provided evidence that ownership of the rental unit was transferred from the landlord to the current owner on February 13, 2008 and submitted that the landlord was not the landlord after that date. The legal representative testified that the new owner's intention was to convert the two adjacent units to one unit; however, there were problems getting permission from the strata and the city so the owner re-rented the rental unit. The rental unit is currently rented for \$3,000.00 per month.

The landlord was of the position that in January 2008 the tenant, the landlord and the owner met at the rental unit and mutually agreed that the tenancy would end since the tenant's condominium was nearing completion and the new owner wanted to make substantial renovations. The legal representative submitted that the evidence of a mutual agreement to end tenancy in writing can be seen by viewing all of the emails that went back and forth between the tenant and the landlord.

Analysis

The first issue to determine is the identity of the landlord after the property was legally transferred to the current owner. Under the Act, a landlord can be someone other than the owner of the property. Section 1 defines landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

[my emphasis added]

From the evidence before me, I see that the respondent landlord, not the owner, communicated with the tenant on February 28, 2008 with respect to the tenancy ending. The respondent landlord also wrote that the landlord would continue to cash the tenant's rent cheques and credit the owner. All other communication with the tenant after the property was transferred was with the respondent landlord. I find the preponderance of evidence indicates that the respondent was the landlord before and after the property was transferred to the owner for the duration of this tenancy. After the property was transferred I find the landlord was acting in the capacity of paragraph (a) in the definition of landlord as emphasized above.

The landlord had provided copies of emails as evidence of the communications between the landlord and tenant and that evidence was submitted on time. However, the legal representative provided further evidence well after the time limits for serving evidence and I have disregarded the late evidence.

Section 44 of the Act provides for the ways a tenancy may end. The landlord's legal representative is quite right that a tenancy may end by mutual agreement in writing. The Residential Tenancy Branch provides a form called "Mutual Agreement to End Tenancy" for the convenience of tenants and landlords who wish to mutually agree to end their tenancy in writing. The document provides for the date the agreement was reached, the date the tenancy will end, the signature of the parties and the affirmation that both parties mutually agree to end the tenancy. Although the use of this form is not a requirement of the Act, I find that it indicates the type of information that would be necessary to find a tenancy had ended by mutual agreement. I find the legislature required that a mutual agreement to end a tenancy be in writing to avoid the problematic position of disputed verbal testimony, such as we have here.

The landlord did not use the form provided by the Residential Tenancy Branch or any other single document to establish that the tenant had agreed to end the tenancy but is relying upon the use of numerous emails to establish a mutual agreement to end tenancy in writing. I find emails to be weak evidence of communication between parties as they are not signed by the parties. I also find the landlord's use of emails as evidence of an agreement is inconsistent with the landlord's normal practice of drafting legal documents where real estate dealings are involved, as evidenced by the contracts the landlord had with the owner. It is unclear why the landlord would choose such a casual approach to end the tenancy without proper documentation. Therefore, I do not accept that piecing together numerous emails between the parties is evidence of a mutual agreement to end the tenancy in writing.

As stated above, I have concluded that there is insufficient evidence to find that the tenancy ended by mutual agreement in writing but I am satisfied that there was a discussion about ending the tenancy; however, a discussion does not translate to an agreement. Accordingly, I find that the landlord required the termination of the tenancy and did so in a manner not in accordance with the requirements of the Act. Upon review of the evidence, I found it to be clear that the tenant did not want to leave the rental unit when the landlord required him to move out. Therefore, I do not accept the landlord's position that the landlord has not violated the Act because the tenant moved out and ended the tenancy.

Where a party violates the Act, the party making a claim against that party must substantiate the damages or loss they have incurred. The Act does not provide for a penalty of one month's rent where a landlord does not issue the correct Notice to End Tenancy. Furthermore, the compensation sought by the tenant for the landlord not renovating the rental unit is applicable where a tenant receives a *2 Month Notice to End Tenancy for Landlord's Use of Property*. The tenant was not served with such a Notice and the compensation provisions attached to the use of that form can not be

automatically applied in this case. However, the Act cannot be avoided by refusing to comply with the requirements of the Act. Therefore, I have considered the loss the tenant suffered as a result of the tenancy being ended by the landlord and at a date earlier than desired by the tenant.

I am highly skeptical that the tenant would have continued to pay rent for the rental unit to merely accommodate out of town guests and visitors. The tenant did not provide evidence that he has had to pay for accommodation for guests at hotels or other places. I accept that the tenant was moving out of the rental unit to live in his new condominium; however, he had to move sooner than desired. I heard that the tenant had to move and store many of his belongings; however, I am not satisfied that the tenant would not have incurred that expense in the very near future.

Therefore, I award the tenant a nominal award of \$1,000.00 for the inconvenience to accommodate the landlord's requirement to vacate the rental unit by the end of April 2008 and make this Application for Dispute Resolution. I provide the tenant with a Monetary Order of \$1,000.00. The tenant must serve the Monetary Order upon the landlord and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenant is provided with a Monetary Order in the amount of \$1,000.00.

February 18, 2009

Date of Decision

Dispute Resolution Officer