



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and to recover the filing fee for the application.

The parties appeared, the hearing process was explained and the parties were given an opportunity to ask questions about the hearing process.

The tenant was informed that as this was his application for monetary compensation from the landlord, he bore the burden of proof of substantiating his claim. I detailed to the tenant the steps required of him in establishing a claim for damage or loss.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Matter-

It should be noted that at the beginning of the presentation of the tenant's statement of claim, I began asking questions of the tenant which were relevant to his claim. I asked the tenant about evidence which I considered would be necessary and which would be required in proving a claim for damage or loss as has been explained to the tenant. It should be further noted that the tenant submitted very little documentary evidence.

At this point, when it became apparent that the tenant understood the necessity to have submitted verifying documentary evidence, the tenant became defensive and demanded that I recuse myself from hearing his application. I refused this request, as

there were no grounds. I informed the tenant that the questions I asked of him are typical questions I ask of any applicant requesting a monetary order.

The tenant again appeared frustrated and stated that he just wanted to “tell his story,” which he considered his evidence. At one point during the hearing, the tenant pointed out that all the landlord had in defence of his application was her testimony and that was what he had, his testimony in support of his application.

Issue(s) to be Decided

Has the tenant established an entitlement to a monetary order and to recover the filing fee?

Background and Evidence

There is no written tenancy agreement.

I heard testimony from the tenant that the tenancy began in December 2002 and ended at the end of August 2011.

I heard testimony from the landlord that the tenancy began in March 2002 and ended when the tenant vacated the rental unit on September 14, 2011.

The parties ultimately agreed that the monthly rent at the end of the tenancy was \$1260.00.

The rental unit was in the basement suite of the landlord's home.

The tenant's monetary claim is as follows:

2 months rent as compensation for 2 month Notice	\$2550.00
Excess in rent payments in new accommodations, 6 months	\$1050.00
Utilities in new accommodation, 6 months	\$496.00
Moving expenses	\$1000.00
Breach of contract of long term tenancy	\$5000.00
Breach of contract, storage space in garage withdrawn	\$150.00
Breach of contract, garage items store 3 months in rental space	\$300.00

Filing fee	\$100.00
Total	\$15,646.00

The tenant's relevant evidence included seven pages of electronic mail transmissions between the parties during the tenancy, with the first one being from September 2008 and a sheet of handwritten notations of differing cheques written by the tenant.

2 months rent as compensation for 2 month Notice- In support of his claim for compensation equal to two months' rent, the tenant said that that the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property. As the document was not submitted into evidence, I asked the tenant which reason(s) was listed by the landlord.

The tenant stated that reason listed was that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The tenant agreed that the landlord's spouse is using the rental unit, which is in the basement of the landlord's house.

The tenant argued that he was entitled to the above mentioned compensation because although the landlord's spouse is using the space as intended, he (the spouse) did not "need" to use the space as the landlord and her spouse had plenty of room in the rest of their home. Due to this the tenant questioned the good faith intent of the landlord.

In response, the landlord submitted that the tenant's feelings were hurt when she wanted to end the tenancy and that he took it very hard.

The landlord stated that her spouse had suffered serious health problems, which resulted in his retirement. The landlord stated that her spouse uses the basement suite as his den and office area and for a separate suite when family members came to visit.

The landlord stated she did not feel the need to discuss their private affairs with the tenant and that she just did not want to rent out the basement suite anymore as her spouse needed the extra space since he retired. The landlord stated that she followed the requirements of the Act in issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property, and that the tenant received compensation equal to a month's rent for having been issued the Notice.

Damages associated with retaliatory action; Pain and suffering owing to stress and anxiety-When questioned, the tenant argued that he was entitled to compensation as he suffered a heart attack a month after the tenancy ended. The tenant attributed his heart attack to the stress he suffered due to the tenancy ending.

When questioned as to evidence, the tenant said it would be impossible to have evidence as his heart attack was the proof of his stress.

I did not ask the landlord for a response to the tenant's claim for compensation for stress and anxiety as she had no knowledge of his claim that he had suffered a heart attack.

Excess in rent payments in new accommodations, 6 months-The tenant stated he was entitled to compensation as he was evicted when there was a difficult rental market, which caused him to pay more in monthly rent. The tenant stated that the 2 Month Notice issued by the landlord did not provide him enough flexibility in finding new accommodation.

Utilities in new accommodation, 6 months-The tenant stated he is entitled to compensation for having to pay utilities in his next rental unit as he did not have to pay for utilities at this rental unit.

Moving expenses-The tenant stated that he was entitled to moving expenses after being evicted and that he paid \$1000.00.

Breach of contract of long term tenancy-The tenant claimed that the parties had neither a fixed term tenancy nor a month to month tenancy; instead the parties entered into a long term tenancy as he told the landlord at the start of the tenancy that was what he wanted. The tenant stated the tenancy was like a "common law relationship," which he argued would require an extended ending period.

The tenant argued that the landlord should have called and worked out a mutually agreeable ending period, which she did not. The tenant stated that resulted in the landlord breaching the "spirit of the long term tenancy agreement" and that he was therefore entitled to compensation.

In response, the landlord stated that the tenancy agreement has always been month to month from the beginning of the tenancy. The landlord reiterated that she and her spouse were using the space of the former rental unit.

Breach of contract, storage space in garage withdrawn-The tenant stated that when the tenancy started, he was given 2 metres of storage space in the garage, and that the space was gradually withdrawn.

In response, the landlord stated that the use of the garage was never part of the tenancy agreement as the tenant was given his own separate storage space. The landlord stated that when she came home one time, she discovered that the tenant had stored his daughter's personal property in the garage, and that he was asked to remove them.

Breach of contract, garage items store 3 months in rental space-The tenant withdrew this claim.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must prove all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the tenant to prove damage or loss.

2 months rent as compensation for 2 month Notice-Under the Act, a tenancy is either for a fixed term or on a month to month basis. A fixed term tenancy clause is required to set forth the date the tenancy ends and whether at the end of the fixed term, the tenancy may continue. The Act stipulates that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the

rights and obligations under it. As the parties did not have a written tenancy agreement which clearly communicated that the parties have entered into a fixed term tenancy, I find that these parties entered into a month-to-month tenancy. There is no provision or definition under the Act for a “long term agreement.”

The Act states that a landlord who is an individual may end a tenancy in respect to a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit by issuing a tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property.

In the case before me, there is no dispute that the landlord issued to the tenant the said 2 Month Notice and pursuant to that Notice, the tenant vacated the rental unit, having received compensation equal to one month's rent.

There is likewise no disagreement that the landlord and her spouse are using the bottom floor of their home, the former rental unit, as provided in the Notice.

As the landlord is using the rental unit as stated in the 2 Month Notice to End Tenancy for Landlord's Use of the Property, I find the landlord acted in good faith in ending the tenancy.

I therefore find the tenant submitted insufficient evidence to prove that the landlord violated the Act, regulation or tenancy agreement, which is step one of his burden of proof. I therefore dismiss his claim for \$2550.00, without leave to reapply.

Damages associated with retaliatory action; Pain and suffering owing to stress and anxiety-I find the tenant submitted insufficient evidence to prove that the landlord's actions caused him to suffer stress or anxiety. I have no medical records, psychological records or any other records before me which documented the tenant's claim.

Additionally Residential Tenancy Branch Policy Guideline section 16 suggests this to be a claim in tort, which is a personal wrong, caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find this claim rises to that requirement as I find that the landlord complied with the Act in issuing the Notice to end the tenancy.

I therefore dismiss the tenant's claim for \$5000.00, without leave to reapply.

Excess in rent payments in new accommodations, 6 months, Utilities in new accommodation, 6 months and moving expenses-As I have found that the landlord has not breached the Act in ending the tenancy, I find the tenant submitted insufficient evidence to meet the first step of his burden of proof.

I therefore dismiss the tenant's claim for \$1050.00, \$496.00 and \$1000.00, without leave to reapply.

Even had I not found that the tenant failed to meet step 1 of his burden of proof, the tenant additionally failed to submit proof to verify an alleged loss and I therefore would still make the decision to dismiss his claim for these items.

Breach of contract of long term tenancy-As I have found that there is no provision or definition under the Act for a "long term tenancy" or that the landlord breached the Act, I find the tenant submitted insufficient evidence to meet any step of his burden of proof and I therefore dismiss his claim for \$5000.00, without leave to reapply.

Breach of contract, storage space in garage withdrawn-I find the tenant submitted insufficient evidence that he had contracted for storage space in the garage. I therefore dismiss the tenant's claim for \$150.00, without leave to reapply.

Due to the above, I find the tenant has provided insufficient evidence to substantiate the merits of his claim.

Conclusion

I therefore dismiss the tenant's application, in its entirety, without leave to reapply.

As I have dismissed the tenant's application, I decline to award him the filing fee.

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: May 28, 2012.

Residential Tenancy Branch